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**Experts, Non-Experts, and Policy Discourse:
A Case Study of the Royal Commission on
New Reproductive Technologies**

by

Francesca Scala, B.A., MA.

**A thesis submitted to the Faculty of Graduate Studies and Research
in partial fulfillment of
the requirements for the degree of**

Doctor of Philosophy

**School of Public Policy and Administration
Carleton University
Ottawa, Ontario**

May 2002

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of the Royal Commission on New Reproductive
Technologies***

submitted by

Francesca Scala, M.A.

in partial fulfillment of the requirements
for the degree of Doctor of Philosophy

Director, School of Public Administration

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February 7, 2002

Abstract

The dissertation examines Canada's 1989 Royal Commission on New Reproductive Technologies as the official forum for public deliberation on this very complex issue. The Commission showed great promise for defining questions of infertility treatment and related scientific research as social questions and matters of public concern. However, the Commission's potential to broaden the debate and challenge the authoritative cognitive map of medicine in this policy area was not realised. Some have argued that the Commission's pro-reproductive technologies stance resulted from government capitulating to the powerful interests of the biomedical industry. This dissertation argues that this failure can best be explained by looking at the interaction between two separate yet interrelated factors: 1) the organisational design of the Commission, and 2) the individual rights discourse of abortion politics.

Drawing from the institutional approach to the study of public policy, this research explores the relationship between the Commission's internal organisational structures and administrative processes, and the framing of the debate on reproductive technologies. The dissertation argues that several 'formative' decisions regarding the Commission's research program and public consultations directly or indirectly consolidated the authority of medical-scientific experts and pushed to the margins the perspectives of expert and non-expert groups critical of reproductive technologies. For example, the scientific and technological themes of the research program and the Commission's management style led to the hierarchical ordering of forms of knowledge, with scientific knowledge assigned the greatest importance. Members of the scientific and medical communities were assigned expert status while community groups and feminist researchers were regarded as interest groups advancing a political agenda. The bureaucratic principles of efficiency and a hierarchical chain of command that dominated the internal deliberations of the Commission further hindered the ability of non-experts to influence the scientific-medical discourse on new reproductive technologies. As a result, the 'cognitive map' of the scientific and medical communities had greater opportunity to influence the debate on reproductive technologies and delineate the appropriate policy outcomes. The dissertation also found that the policy legacy of abortion politics, which emphasized reproductive choice, individual autonomy, and equality of access, reaffirmed the privileged status of the medical-scientific model, which regarded reproductive technologies as necessary and inherently neutral treatments and practices.

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Chapter 1 - Experts, Citizens, and Public Inquiries: The Framing of Reproductive Technologies in Canada

The competing discourses on ARTS¹ confer a range of conflicting meanings, values, and identities on the technologies – producing, revising, and contesting ways they can be used and what they mean. Because no technology stands outside of or occurs before its representations in discourse, there is no “real”, fixed, or essential technology. How a technology gets represented is always a result of historical negotiations that are subject to subsequent renegotiations.

-Dion Farquhar²

Introduction

The birth of the first ‘test-tube’ baby in 1976 represented the technological realisation of an idea once confined to the imagination of science fiction writers – the conception of human life within the sterile confines of medical laboratories. One of the earliest and most popular literary depictions of this scenario was Aldous Huxley’s 1932 *Brave New World*, which described a futuristic society in which each person is conceived in a test-tube rather than a mother’s womb, and an authoritarian government controls every aspect of human reproduction. The successful birth of a child conceived through the technology of *in vitro* fertilisation (IVF) not only exemplified scientific and technological advancements in contemporary reproductive medicine but it raised a number of ethical and social issues regarding the impact of these technologies on prevailing institutions and practices, such as reproduction, motherhood, parenthood, and the family.

¹ Assisted Reproductive Technologies.

In the 1980s, a number of events brought to the fore some ethical and legal dilemmas posed by reproductive technologies. In 1984, the legal status of frozen embryos 'orphaned' after the accidental death of their biological parents in a plane crash became a hotly contested issue.³ The American couple did not leave any stipulation or requests regarding the embryos in their will, thus leaving unanswered the question of ownership. The fertility clinic 'housing' the frozen embryos in Australia argued that it should have the final say regarding the fate of the embryos, whether it was to destroy them, donate them to an infertile couple or utilise them for research purposes. Religious and anti-abortion groups argued that the frozen embryos should be given personhood status and adopted by an infertile couple.

Another well-publicised event in the late 1980s was the controversy surrounding parental rights in the surrogacy arrangement of an infant known to the public as 'Baby M'. The surrogate mother's attempt to gain guardianship of the child led to a long and bitter custody battle between the surrogate mother and the biological parents who had contracted her services.⁴ In both cases, the courts became the primary venue for settling disputes involving parental and ownership rights in this burgeoning field. However, these well-publicised cases and others like them also sparked a broader public debate on the ethical and social implications of these technologies and prompted a number of social

² Dion Farquhar, *The Other Machine: Discourse and Reproductive Technologies*. (New York: Routledge, 1996), 5.

³ Janet Gallagher, "Eggs, Embryos and Foetuses: Anxiety and the Law" in Michelle Stanworth's *Reproductive Technologies: Gender, Motherhood and Medicine*, (Minneapolis: University of Minnesota Press, 1987).

⁴ Janice Raymond, *Women as Wombs: Reproductive Technologies and the Battle Over Women's Freedom* (San Francisco: HarperCollins Publishers, 1993).

movement organisations and interest groups in various countries to lobby for government action.

A common governmental response to the controversies surrounding reproductive technologies was the appointment of public inquiries. Inquiries became important government tools for generating policy-relevant knowledge on the issue of reproductive technologies. In Canada, the federal government appointed the Royal Commission on New Reproductive Technologies (RCNRTs) in 1989. Like other inquiries before it, it brought together experts from a variety of disciplinary and professional backgrounds in an effort to fulfil its mandate to investigate the social, legal, and ethical implications of reproductive technologies and develop recommendations for government action. Moreover, in the tradition of policy-formulating royal commissions, the RCNRTs held public consultations and hearings to allow ordinary citizens, interest groups, and social movement organisations the opportunity to participate in the official debate on reproductive technologies.

In this dissertation, I examine the policy debate that was expressed in Canada's 1989 Royal Commission on New Reproductive Technologies. The Royal Commission is regarded as the official forum for public deliberation on this very complex issue. It provided ordinary individuals and citizens groups the opportunity to voice their opinions on an issue often regarded as the exclusive domain of scientific and legal experts. The Commission showed great promise for defining questions of infertility treatment and related scientific research as social questions and matters of public concern. It was asked to examine the social and moral implications of reproductive technologies on society in general, and on women and minority groups in particular. Social scientists, including

feminist researchers, were recruited by the Commission to examine a myriad of issues, including the social meanings of fertility treatments, the medicalisation of pregnancy and fertility, and women's experience with reproductive technologies. Moreover, Commissioners appointed to the inquiry came from diverse professional and ideological backgrounds.

Conservative social politics at the time of the Commission's appointment also seemed favourable to restrictions on some of these technologies. In 1989, Brian Mulroney's Conservative government introduced Bill C-43 an amendment to the Criminal Code that would prohibit abortion unless a doctor finds the pregnancy is a threat to the woman's physical, mental, or psychological health. The same year, then Minister of Health and Welfare, Jake Epp, a self-described pro-life supporter, announced that his department would not be funding research on foetal or embryo tissue.⁵ Brian Mulroney's own anti-abortion stance prompted his office to contact the Archdioceses of Toronto for a recommendation on a possible Commissioner.⁶

The Commission's broad mandate, the appointment of Commissioners critical of reproductive technologies, and the neo-conservative political climate suggests that the inquiry intended to move beyond the medical-scientific framing of the issue and launch a comprehensive if not critical examination of these technologies and their impact on Canadian society. However, the Commission's potential to broaden the debate and challenge the authoritative cognitive map of medicine in this policy area was not realised. Some have argued that the Commission's pro-reproductive technologies stance resulted

⁵ Michelle A. Mullen, "The Policy Perils of New Reproductive Technologies, *Policy Options*, March 1996.

from government capitulating to the powerful interests of the biomedical industry.⁷ This dissertation argues that this failure can best be explained by looking at the interaction between two separate yet interrelated factors: 1) the organisational design of the Commission, and 2) the individual rights discourse of abortion politics.

The organisational design of the RCNRTs and the debate on new reproductive technologies

Drawing from the institutional approach to the study of public policy, this research explores the relationship between the Commission's internal organisational structures and administrative processes, and the framing of the debate on reproductive technologies. The process of policy framing is an important one to understand for it defines issues or problems in particular ways, establishes the boundaries of the policy debate, and legitimises the participation of certain political actors while marginalising others.

This case study focuses on the 'formative decisions' taken by the Commission in organising its work and examines how they impacted the framing of the official discourse on reproductive technologies. These decisions are important because they helped determine the trajectory for the Commission's research and consultations. The dissertation argues that several decisions taken by the Commission directly or indirectly consolidated the authority of medical-scientific experts and pushed to the margins the perspectives of expert and non-expert groups critical of reproductive technologies.

⁶ Interview with Suzanne Scorsone, September 10, 1999.

⁷ See Margrit Eichler, "Frankenstein Meets Kafka: The Royal Commission on New Reproductive Technologies", in Gwynne Basen, Margrit Eichler, and Abby Lippman, eds, *Misconceptions: The Social Construction of Choice and the New Reproductive and Genetic Technologies* (Hull: Voyageur Publishing, 1995).

One of the Commission's decisions that impacted the framing of the debate concerned the organisation of its research work. The dissertation explores how the Commission's decision to structure its research program along specific technological categories inevitably privileged medical-scientific expertise over that of other disciplines. These technological areas of inquiry would provide constraints on researchers interested in examining the social and ethical implications of these technologies for segments of Canadian society.

Another decision taken by the Commission was to adopt "Evidence-Based Medicine" (EBM) as a guiding principle in its research work. In the 1980s, EBM was fast becoming an important tool in the health care system for evaluating the effectiveness and risks of medical procedures in order to establish funding priorities. The dissertation argues that the adoption of evidence-based medicine and its emphasis on quantitative methods would create a disciplinary hierarchy that would privilege medical-scientific expertise over that of other disciplines.

The Commission's ability to broaden the debate on reproductive technologies was also hindered by its decision to divide policy analysis and research into two separate functional units. The Commission viewed research and analysis as two separate intellectual endeavours and encouraged competition between the two units rather than collaboration. The dissertation explores how this organisational structure, coupled with a rigid chain of command established by the Chairperson, significantly hindered the level of collaboration and communication among staff members across different functional units.

While the structure and organisation of the research program accorded different status to different disciplines, the Commission's consultations and public hearings did the same for non-experts in the debate. The dissertation argues that the Commission's decisions regarding the structure and timing of public hearings and consultations resulted in more opportunities for professional organisations to influence the policy debate. The Commission regarded professional organisations, such as the Medical Research Council of Canada and the Canadian Bar Association, as the most important stakeholders in its deliberations. Conversely, organisations representing segments of civil society, such as women's groups, were viewed as special interest groups advancing their own agenda. The dissertation explores how these factors impacted the policy debate on reproductive technologies.

The discursive legacy of abortion politics

The medical-scientific model of reproductive technologies characterises reproductive technologies as safe and ethically sound procedures and regards fertility as a fundamental right of the individual. It invokes the language of rights in its approach to ethics where individual autonomy and informed consent are understood within a legal model of doctor-patient interaction. Professional-regulation is regarded as the most effective way to address ethical dilemmas while protecting the integrity of scientific research. Within this model, the debate on reproductive technologies is essentially one of establishing appropriate standards of care by professional self-regulating bodies.

During the public hearings, this model was challenged by several organisations. A significant number of groups were vocal opponents of reproductive technologies, arguing that they were detrimental to the health and well being of their respective communities.

For example, feminist groups were critical of these technologies, arguing that they contributed to the medicalisation and commodification of women's bodies. They demonised reproductive technologies as dangerous procedures foisted on desperate and uninformed women by profit-hungry and misogynist (male) doctors. Disability rights activists contended that reproductive technologies encouraged the notion of the 'perfect baby' and devalued persons that did not meet this criterion. They argued that with prenatal diagnosis, disability becomes viewed as an individual women's problem rather than a societal problem. Religious and anti-abortion organisations contended that many of these technologies undermined the sanctity of the unborn life and of the traditional, nuclear family. Many of these groups situated the debate on reproductive technologies within a broader critique of science and medicine.

While these critical perspectives garnered much media attention during the Commission's mandate, they were not representative of the majority of viewpoints heard during the hearings. The majority of women's groups appearing before the Commission regarded the issue of reproductive technologies as one of reproductive choice. While several of these groups expressed some reservations regarding the safety of some of the treatments, they felt it was important that women's individual autonomy be respected. Many believed that government restrictions on any of the technologies would inevitably challenge women's reproductive freedom *vis-à-vis* abortion. Organisations representing infertile couples and lesbians were also in favour of the technologies, arguing that government should ensure that women have access to these treatments, irrespective of economic class and sexual orientations.

The dissertation argues that the language of abortion politics, that is, the emphasis on equality of access, individual autonomy, and reproductive choice, complemented the medical model, which regarded reproductive technologies as neutral, necessary, and client-centred.

Methodology

The case study relied upon unstructured interviews, and a review of transcripts and official Commission documents. In devising my interview list, I consulted the list of staff members found in the back of the Commission's Final Report. I targeted a number of individuals who had occupied key positions within the Commission's organisation, such as Commissioners, Research Coordinators, Deputy Directors, and Directors. I also contacted a number of individuals who had worked for the Commission as outside researchers. Overall, twenty-two interviews were conducted for this research. Important information was generated by the interviews regarding the organisational structure of the commission, the disciplinary background of staff members, the channels of communication within the Commission, both vertically and horizontally, and the values orientation of senior and junior staff members regarding their role in the Commission's work. Interviews with former Commissioners were especially important for uncovering the sources of tension and conflict that had characterised their working relationship and which had garnered so much media attention during the Commission's mandate.⁸

⁸ The research proposal was approved by Carleton University's Ethics Committee. Individuals participating in personal interviews were asked to sign a consent form. The form outlined the intent of the study as well as their rights as participants in the research. A copy of the form is found in Appendix 3.

Due to the sensitive nature of some of the information generated by the interviews, I chose to keep the names of interviewees who were former staff members confidential in order to protect their identity. Commissioners interviewed for the purpose of this research gave their consent to be identified in the research project.

The case study also required an examination of the Commission's records located at the National Archives of Canada in Ottawa, Ontario. Documents, such as internal memos, press releases, and briefs presented by participants during hearings provided insights on how and why the Commission's discourse on reproductive technologies developed the way it did. A close examination of the Commission's 'paper trail' also helped trace the entrails of decision-making and the forging of ideas. An examination of documents and Commission records helped explain a number of issues, including the events which led to the appointment of the royal commission, the rationale for the Commission's assigned mandate, the criteria used for choosing the Commissioners, the firing and subsequent replacement of four Commissioners and the internal system of governance (i.e.: among the Commissioners and between the Commissioners and the research staff). An examination of the Commission's internal system of governance was especially useful in showing how the discourse of reproductive technologies was influenced by the institutional setting in which it took place.

The dissertation used triangulation to corroborate the validity of the results of the data and the evidence on which they were based. Whenever possible, the study sought out at least three different sources of data to confirm the emerging findings. Triangulation not

only provided a procedure to ensure validity but it also, as Mathison explains, allowed for a more “holistic understanding” of the situation.⁹

Overview of chapters

The second chapter provides an overview of the literature on the role of royal commissions in the policy process. It examines the institutional adaptability of royal commissions as *ad hoc*, temporary institutions appointed to generate research on a particular issue and develop recommendations for government action. At the turn of the century, royal commissions became important vehicles for bringing together a wide range of academic and policy researchers in order to create policy-relevant knowledge. From economic policy to Canada - Aboriginal relations, royal commissions have been institutional sites for policy debates on a number of important issues facing Canadian society. In recent years, royal commissions have incorporated mechanisms for public participation and public deliberation. In doing so, commissions have allowed alternative perspectives to influence the framing of a policy issue.

The dissertation regards royal commissions as institutions involved in the production of policy-relevant knowledge and in the construction and validation of policy meanings. Building on Jane Jenson’s study of royal commissions, this research advocates a dynamic interpretation of royal commissions, which recognises them “...as one of the several places in which policy analysis and learning might take place, and one that provides some room for public involvement.”¹⁰ Royal commissions constitute

⁹M.P. Mathison. “Why Triangulation?”, *Educational Researcher*, 1988, 17, 13-17.

¹⁰ Jenson, Jane. “Commissioning Ideas: Representation and Royal Commissions,” in Susan D. Phillips, ed., *How Ottawa Spends, 1994-95: Making Change* (Ottawa: Carleton University Press, 1994), 39.

important sites for public deliberation on some of the intractable issues confronting Canadian society. They are institutionalised political spaces that represent ideas and identities that surround a policy issue. This chapter also explores some of the organisational attributes of royal commissions that influence the framing of policy debates.

The third chapter examines some of the literature on the role of ideas and experts in the policy process as well as literature on the neo-institutional approach to the study of politics. The primary objective of this literature review is to highlight how political ideas become influential through institutional structures. The neo-institutional approach examines the influence of institutional arrangements on policy outcomes. These institutions may include macro-level institutional arrangements like the party system, federalism, and the economy as well as micro-level institutions, including standard operating procedures, routine practices and organisational culture. These institutions, to some degree or another, influence policy debates and delineate appropriate policy options by structuring the interaction between experts and decision-makers. It is through institutions that certain 'cognitive maps' become influential in a policy domain. This literature will aid in examining why and how a particular policy frame on reproductive technologies emerged within the Commission.

The fourth chapter provides an overview of the political and social contexts of reproductive technologies, and of the events that led to the appointment of the Royal Commission on New Reproductive Technologies in 1989. It reveals how reproductive technologies have been perceived as the exclusive domain of medical-scientific experts, with governments and the general public largely excluded from decisions in this area.

The chapter examines how new reproductive technologies, in particular *in vitro* fertilisation and fertility drugs, were quickly transformed from experimental treatments to routine practices in reproductive health care. The chapter then explores a number of international and national public inquiries appointed to look into some of the legal and ethical implications associated with reproductive technologies. While these inquiries did reconcile some issues, they did not address important concerns raised by critics of reproductive technologies, such as religious and feminist communities. These communities forged an international movement against reproductive technologies and mobilised lobbying efforts in many industrialised countries. The chapter analyses competing perspectives on reproductive technologies by alternative epistemic communities and examines their attempts to challenge the medical-scientific discourse on reproductive technologies. The chapter ends with an examination of the Canadian Coalition for a Royal Commission on New Reproductive Technologies, which lobbied the federal government for an inquiry into the social and ethical implications of these technologies on Canadian society.

The fifth chapter is an examination of the internal organisation of the Royal Commission on New Reproductive Technologies. It shows how the structure and practices of the Commission's research agenda and public hearings helped influence the discourse that emerged on new reproductive technologies. In particular, the chapter outlines how the scientific and technological themes of the research program and the Commission's management style led to the hierarchical ordering of forms of knowledge, with scientific knowledge assigned the greatest importance. Scientific experts were given numerous avenues to deliberate on reproductive technologies. Moreover, while members

of the scientific and medical communities were assigned expert status, community groups were regarded as interest groups advancing a political agenda. The bureaucratic principles of efficiency and a hierarchical chain of command that dominated the internal deliberations of the Commission further hindered the ability of non-experts to influence the scientific-medical discourse on new reproductive technologies. As a result, the 'cognitive map' of the scientific and medical communities had greater opportunity to influence the debate on reproductive technologies and delineate the appropriate policy outcomes.

While the previous chapter outlines how and why medical-scientific expertise and authority came to be privileged within the Commission's research work, the fifth chapter traces the viewpoints of various segments of society as heard in the public hearings. The chapter reveals that while several groups were critical of reproductive technologies, many organisations supported the principles of individual rights and reproductive choice. The policy legacy of abortion politics, which emphasised a woman's right to choose, influenced the positions of many women's groups participating in the public hearings. Moreover, the depiction of infertility as a disease amenable to medical treatments further validated the professional authority of the medical community in the area of reproductive technologies and shifted the debate to issues of funding and accessibility.

The seventh chapter examines the Royal Commission on New Reproductive Technologies' Final Report, *Proceed with Care* and provides an overview of some of the more notable recommendations. The content of *Proceed with Care* suggests that the Commission was greatly influenced by the scientific discourses of the medical-scientific communities. The Final Report gave a green light to embryo research (although with

certain restrictions) and prenatal and genetic treatments and services, and it upheld professional standards and guidelines in these areas. However, other recommendations reflected fiscal concerns in health care policy. The Commission recommended that *in vitro* fertilisation, a costly treatment for infertility, should be regarded as an experimental procedure except in cases where it was proven to have a high rate of success. As these were experimental, provincial governments are not obliged to include them as insurable services under their health care systems. The Commission also recommended the creation of a regulatory and licensing framework to monitor reproductive technologies that would allow for greater public accountability and participation.

While the Commission sided with the individual rights discourse on reproductive choice, it did so within a framework of fiscal constraints. Women and couples wanting access to infertility treatments that did not satisfy medical criteria would have to pay for these services out of pocket. The Commission's recommendation to privatise *in vitro* fertilisation procedures was based on research which showed the their low success rate in treating conditions other than fallopian tube obstruction.

The last chapter offers an overview of the major findings of the research and discusses how they contribute to our understanding of some of the tensions and challenges involved in bringing together different experts and non-experts in a policy debate.

Chapter 2 - Expert Research, Citizen Participation, and Royal Commissions

Introduction

The royal commission of inquiry has been a distinguishing feature of the Canadian political process since this country's inception. Since 1868, over 200 royal commissions¹¹ have been appointed by governments to examine a broad range of issues, from allegations of misconduct by a government official to the complex issue of reproductive technologies. Despite their historical legacy, royal commissions are the targets of much criticism. The most common critique by both academics and lay groups alike is their perceived exorbitant cost.¹² Moreover, the usefulness of royal commissions has been questioned because governments are not legally or politically obliged to implement their recommendations. Frequently, they have been quickly dismissed as legitimising mechanisms aimed at achieving consensus on government policy.¹³

This chapter reinterprets the role of royal commissions suggesting a more dynamic interpretation that recognises the contributions of royal commissions to the framing of social problems and policy issues.¹⁴ It argues that royal commissions are

¹¹ http://www.nlc-bnc.ca/indexcommissions/about_e.htm.

¹² The 1996 Royal Commission on Aboriginal Peoples broke all records, with a \$65 million price tag (\$73 million in 2001 dollars).

¹³ See Seymour V. Wilson, "The Role of Royal Commissions and Task Forces", in Bruce Doern and Peter Aucoin, eds., *The Structures of Policy-Making in Canada* (Toronto: Macmillan, 1971); J.E. Hodgetts, "Should Canada Be De-Commissioned?" *Queen's Quarterly*, Vol. LXX, No.4 (Winter 1964), 475-90; Bruce Doern, "The Role of Royal Commissions in the General Policy Process and in Federal-Provincial Relations" *Canadian Public Administration* 10, (1967), 417-433.

¹⁴ Jenson, 1994; Thomas Berger, "The Mackenzie Valley Pipeline Inquiry", *Queen's Quarterly*, Vol. 83, No. 1, (Spring, 1976); Bradford, Neil. "Ideas, Institutions, and Innovation: Economic Policy in Canada and Sweden" in Stephen Brooks & Alain

useful instruments for policy analysis because they generate independent research and analysis, free from bureaucratic and political constraints and provide a public forum for groups and citizens to present their views on a particular issue.¹⁵ This is especially important given that the growing demand for public participation in the policy process, coupled with the dilemmas raised by rapid technological and social change, underscore the need for both democratic practices and expert knowledge in policy deliberations.

The chapter begins with a brief history of royal commissions in the Canadian policy-making process. The chapter then examines the different functions performed by royal commissions over the years, from investigations into government misconduct to the formulation of important social and economic policies. This is followed by a discussion of the activities of royal commissions that set them apart from ordinary government organisations, namely their use of academic research and public consultations. The discussion explores some of the debates that surround these two streams of activities and draws attention to factors that influence a commission's work, including its final recommendations. This discussion is an important one for the dissertation because it identifies some of the organisational features and practices of royal commissions that influence how and to what extent expert and non-expert perspectives are represented in a policy debate.

Gagnon, eds, *The Political Influence of Ideas: Policy Communities and the Social Sciences* (Toronto: Westport: Praeger, 1994).

¹⁵ Peter Aucoin, "Contributions of Commissions of Inquiry to Policy Analysis: An Evaluation," in Pross, Christie, and Yogis, eds. *Commissions of Inquiry* (Toronto: Carswell, 1990).

The historical development of royal commissions in Canada

Canada's experience with royal commissions can be traced back to the country's colonial past.¹⁶ The British government appointed several commissions to investigate issues pertaining to its colonial interests in Canada. Since Confederation, the Canadian government has appointed roughly 450 commissions of inquiry to study a variety of issues and topics. Doern divides the subjects addressed by royal commissions into two categories: Non-recurring issues, which are a unique result of a specific event or incident; and recurring economic, social and cultural issues. The first category includes inquiries into occurrences of administrative and governmental misconduct as well as investigations into environmental and industrial disasters. In the second category are commissions pertaining to general policy issues, such as immigration, economic policy, the civil service, and cultural issues.¹⁷

Hodgetts offers a more detailed grouping of the issues investigated by royal commissions over the years.¹⁸ He outlines four categories of issues:

- Commissions that inquire into unexpected major disasters or disturbances
- Commissions investigating conflict situations, and social and cultural issues

¹⁶ Federal commissions of inquiry are generally established by order in council of the federal cabinet under the Inquiries Act. The Act is divided into two parts. Part I outlines provisions for 'public inquiries' and defines them as inquiries "made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof" (L.R.C., p.5). Part II of the Act provides for 'departmental investigations' whose mandate is to investigate and provide an account of departmental activities, and the official conduct of department officials.

¹⁷ Doern, 1967.

¹⁸ J. E. Hodgetts. "Public Power and Ivory Power", in Trevor Trevor and Jack McCleod, eds, *Agenda 1970: Proposal for a Creative Politics* (Toronto: University of Toronto Press, 1968).

- Commissions addressing aspects of the economy
- Commissions related to aspects of the public service, departmental decisions, and the misconduct of governmental officials

The first category is exemplified by the 1907 commission on the collapse of a Quebec bridge and the inquiry into the Ocean Ranger Marine Disaster of 1982.

Commissions investigating a crisis involving a ministry also fall under this category. The second category addresses such issues as bilingualism and biculturalism, the status of women, and the national development of the arts, letters, and sciences ¹⁹ The third category of issues covered by royal commissions are those pertaining to certain aspects of the economy. Examples here include Canada's economic prospects, the coal mining industry, the grain trade, and railways and transportation. The fourth and final category includes issues related to some aspect of the public service, departmental decisions, and the misconduct of government officials.²⁰ Ultimately, studies undertaken by royal commissions have provided a wealth of information on a variety of issues, relevant to Canadian society throughout our history.

In the late 1800s, royal commissions appointed in Canada addressed issues facing a new and developing nation. Indeed, the first commission appointed by the new Dominion government examined the administrative workings of the new Canadian state. The 1868 Royal Commission on the Civil Service produced some important initiatives in the improvement of the Canadian civil service. The commission cost \$5700 (\$70,000 in

¹⁹ National Archives of Canada, *RG 33, Records of Federal Royal Commissions, Volume 1*, 1990.

²⁰ *Ibid.*

2001 dollars) and spanned seventeen months.²¹ Other royal commissions from the late 1800s to the early 1900s addressed the pressing problems of the day. For example, in the early 1900s, royal commissions investigated a variety of issues pertaining to western expansion, including the grain trade, transportation, and immigration.²²

With the economic prosperity of the 1920s, the use of royal commissions declined significantly to a yearly average of 3.6.²³ During the economic Depression of the 1930s, there was a resurgence of the government's use of royal commissions. Subjects investigated by royal commissions during the late 1920s and 1930s reflected the federal government's preoccupation with economic adjustment.

Commencing with the Maritime claims in 1926, we meet the investigations of the Transfer of Natural Resources to Manitoba which occurred in 1928, the big investigation of Transportation in 1931, Banking in 1933, then again the Transfer of Natural Resources of Saskatchewan and of Alberta, the Price Spreads Commission, Maritime Claims all occurring in 1934 and, of course, the culmination would be the famous Sirois Commission in 1937.²⁴

The Rowell-Sirois Commission, formally known as the Royal Commission on Dominion-Provincial Relations, was an especially important commission for several reasons. It was appointed in 1937 to examine macroeconomic policy and constitutional matters in the wake of the world recession of the 1930s. The commission became the most expensive royal commission since 1868, costing approximately \$533,600 (\$6.7

²¹ George Henderson, *Federal Royal Commissions in Canada 1867-1966: A Checklist* (Toronto: University of Toronto Press, 1967).

²² Hodgetts, 1968; John Courtney, "In Defence of Royal Commissions", *Canadian Public Administration*, 12,2 (Summer 1969). Between 1911 to 1920, an average of seven commissions were appointed per year.

²³ Seymour Wilson, "The Role of Royal Commissions and Task Forces," in Bruce Doern and Peter Aucoin, eds, *The Structures of Policy-Making* (Toronto: Macmillan, 1971).

million in 2001 dollars). More significantly, however, the Commission occupies an important place in the history of royal commissions for it was the first to pursue a comprehensive research program, and recruit a number of independent researchers to study federal-provincial relations.²⁵ After World War II, royal commissions began to make extensive use of social science research in order to generate information and knowledge on a particular policy area.

After a relative decline in the 1940s and 1950s, royal commissions once again became a popular tool for various Canadian governments. The period of 1958 to 1968 is often cited as the 'golden age' of royal commissions in Canada.²⁶ Between 1963 and 1967, the federal government established an average of four royal commissions per year. Two of the most notable commissions were the 1963 Royal Commission on Bilingualism and Biculturalism (B & B Commission) and the 1967 Royal Commission on the Status of Women in Canada. It is during this time that we witness a transformation of the traditional royal commission from a 'specialised *ad hoc* judicial tribunal' into a "sizeable temporary department staffed by social scientists representing every discipline."²⁷ This transformation contributed to the escalating costs of royal commissions, particularly the costs of policy-formulating commissions. For example, the 1961 Commission on Banking and Finance cost \$731,900 (\$4,320,000 in 2001 dollars) while the B & B

²⁴ Hodgetts, 1964: 474.

²⁵ RG33, 1990; Jenson, 1995.

²⁶ Doern, 1967; Wilson, 1971; Audrey Doerr, *The Machinery of Government in Canada* (Toronto: Methuen Publications, 1981).

²⁷ Jenson, 1995: 42.

Commission and the Commission on the Status of Women cost \$9 million (\$47.5 million in 2001 dollars) and \$1.9 million (\$10 million in 2001 dollars), respectively.²⁸

Wilson²⁹ attributes the extensive use of royal commissions during the late 1950s and 1960s to the personal agendas of political leaders. He argues that the Conservative Party under Diefenbaker appointed royal commissions to obtain expert knowledge outside the civil service. Diefenbaker's fundamental mistrust of the federal bureaucracy due to its ties to the Liberal party, led to an increased reliance on royal commissions in the policy process. Wilson's study also found that the use of royal commissions in Canada increased during economic downturns.

The Canadian government resorted to the highest yearly average use of RCs as instruments of policy-making during the three periods in our history when allocative resources were extremely scarce.³⁰

The increased use of royal commissions during this period may also be related to changes in party governments. Hodgetts and Doern both support this hypothesis, arguing that the historical pattern of royal commissions reveals that they become more prevalent following a change in government. The reasons for this pattern are not entirely clear. Doern proposes that royal commissions, as sources of expert knowledge, may provide the newly elected party the research and expertise it lacked as the opposing party. However, Doern acknowledges that the issues examined by royal commissions would have been studied regardless of whether or not there was a change in government. In the end, royal commissions during these periods responded to economic and social changes occurring

²⁸ Ibid.

²⁹ Wilson, 1971.

³⁰ Wilson, 1971: 118.

within Canadian society. As Jenson³¹ argues, political and social crisis and instability provided the impetus for the appointment of many royal commissions. For example, the increasing tensions between English- and French-speaking Canadians, along with the rise of Quebec nationalism prompted the federal government's appointment of the Royal Commission on Bilingualism and Biculturalism. The Royal Commission on the Status of Women (RCSW) also responded to social changes in Canadian society. As Jenson explains:

The RCSW was commissioned to develop responses to the accumulating changes in women's economic and social conditions - and the inequalities visible in them - which had been generated in the post-war years by changes in the labour market, reproductive technologies and family patterns.³²

After the 1958-68 'Golden Age', royal commissions fell into relative disuse in favour of task forces. As Prime Minister, Trudeau used task forces to ensure the supremacy of the Prime Minister's Office in policy-making.³³ However, the Trudeau government did enact several recommendations proposed by royal commissions appointed by the previous Diefenbaker and Pearson governments, including some from the reports of the Royal Commission on Taxation and the Royal Commission on Biculturalism and Bilingualism. During the 1970s, royal commissions were primarily established to study narrowly defined issues and investigate occurrences of misconduct, for example the McDonald Commission of Inquiry into the RCMP.³⁴ However, the Trudeau government did appoint several important policy-oriented commissions or

³¹ Jenson, 1995.

³² Jenson, 1995: 46.

³³ Unlike royal commissions, task forces are informally appointed by the executive and are not required by law to publish their reports.

inquiries, including the Royal Commission on Corporate Concentration, the Royal Commission on Financial Management and Accountability, and the Mackenzie Valley Pipeline Inquiry.³⁵

During the 1980s and early 1990s, the federal government continued to appoint royal commissions.³⁶ Several 'small' commissions were appointed during this time, including the 1984 commission on the marketing practices of the potato industry, and the 1989 Royal Commission on National Passenger Transportation. The federal government in the 1980s appointed three policy-formulating commissions. In 1982, the Royal Commission on the Economic Union and Development Prospects for Canada, commonly known as the Macdonald Commission, was established to inquire into the Canadian economy. Like the Rowell-Sirois Commission of 1937, the Macdonald Commission was appointed after a serious world recession. The Commission hired numerous academics from different disciplinary backgrounds to produce 72 volumes of research on various topics related to the Canadian economy that would form the basis of future government policy, for example the Free Trade Agreement under the Mulroney government. The cost of the Royal Commission was approximately \$24.4 million (\$40 million in 2001 dollars).

In 1989, the government established two royal commissions, the Royal Commission on New Reproductive Technologies (RCNRTs) and the Royal Commission on Electoral Reform and Party Financing. They cost \$29.5 million (\$42 million in 2001

³⁴The McDonald Commission was the only time since 1873 that a Prime Minister (Pierre E. Trudeau) testified before a federal royal commission.

³⁵The Inquiry was a quasi-royal commission for while it was not appointed under Part I of the Inquiries Act, it possessed many features of a royal commission.

³⁶It is important to note that the total cost of an individual commission increased sharply during this period. The Commission on New Reproductive Technologies cost \$29.5

dollars) and \$20.7 million (\$29.5 million in 2001 dollars), respectively. The commission on reproductive technologies was appointed in the midst of growing public concern over the moral and social implications of these technologies. The commission on electoral reform was appointed in response to growing public demand for more democratic politics. While its mandate set out to look at a number of specific issues, such as the funding practices of political parties and the compiling of voters' lists, the commission situated its work within a broader discussion on Canadian democracy. As Jenson states:

It soon began to present its work as fitting within that moment of political turbulence and chose to locate its response to what it described as the demands of Canadians for more democracy, in the context of world-wide political change and mounting claims for democratisation of the institutions of representation.³⁷

The most recent policy-oriented commission was the Royal Commission on Aboriginal Peoples. The Commission cost over \$65 million (\$73 million in 2001 dollars) and was appointed in 1991 to inquire into the relationship among Aboriginal peoples, the Canadian government, and Canadian society, and propose possible solutions to the problems facing Aboriginal peoples today.³⁸ It established a series of national round tables on selected topics and commissioned over 350 studies.³⁹ The Commission's collaborative research practices and its integration of expert and experiential forms of knowledge constitute an important change from the expert-driven research, which has

million in contrast to the \$9 million price tag of the bilingualism and biculturalism commission.

³⁷ Jenson, 1995.

³⁸ Royal Commission on Aboriginal Peoples, *Final Report*, 1996: 2.

³⁹ Jill Wherrett, "The Research Agenda of the Royal Commission on Aboriginal Peoples", *Canadian Public Administration*, Vol. 38, NO. 2(Summer), 1995.

traditionally dominated royal commissions. Its participatory research methods may, as Jenson suggests, provide the model for future royal commissions.⁴⁰

In examining the historical development of royal commissions in Canada, we can discern a number of general trends concerning their origins and appointment. First, the issues examined by royal commissions during the late 1800s and early 1900s, such as western expansion, the grain trade and immigration, paralleled the Canadian state's preoccupation with nation building. Subsequent royal commissions coincided with the state's expanding role in economic and social policy. Second, royal commissions in Canada have emerged from political and economic instability. The economic depression of the 1930s, the recession of the early 1980s and the nationalist movement in Quebec are events that have been addressed by federal governments *via* royal commissions. The recent Royal Commission on Aboriginal Peoples was appointed by the Mulroney government following the demise of the Meech Lake Accord and the 1990 Oka stand off between Mohawks and the federal government. In general, the appointment of commissions has followed points of conflict in Canadian history.

Royal commissions as government instruments

A large segment of the literature pertaining to royal commissions examines the various functions performed by royal commissions in the policy process.⁴¹ This literature is primarily concerned with exploring *why* governments establish royal commissions. In

⁴⁰ Jenson, 1995.

⁴¹ See Doern, 1967; Wilson, 1971; 1971; Doerr, 1981; R.E. Wraith and G.B. Lamb, *Public Inquiries as an Instrument of Government* (London: George Allen and Unwin Ltd, 1971).

his analysis of the role of commissions in federal-provincial relations, Doern lists six functions performed by royal commissions in the general policy process. They are:

- To secure information as a basis for legislative policy
- To educate the public or the legislature, that is to generate pressure for intended legislation
- To sample public opinion, the 'trial balloon' function
- To investigate the judicial or administrative functions of government
- To permit the voicing of grievances
- To enable the government to postpone action on politically embarrassing question.⁴²

The investigative mandate and capacity of royal commissions secures their role in the pre-decision or research stage of the policy process. Wilson also agrees with Doern's assessment of royal commissions as sources of information for policy-making but he also adds that commissions are often used to communicate government's concerns for a particular issue.⁴³ Wilson argues that many commissions are not appointed to generate new and innovative policy ideas: rather they are used by governments to rally public support for pre-existing policies or agendas. For this reason, says Wilson, commissions exert a conservative influence on the policy process, and their recommendations provide legitimacy for predetermined government action. According to Wilson, political feasibility rather than policy innovation drives the findings of royal commissions.

The unique characteristics of royal commissions also make them more appealing than other types of inquiries, such as task force, parliamentary committees and

⁴² Doern, 1967: 421.

⁴³ Wilson, 1971.

departmental inquiries. Trebilcock makes this distinction in his 'rational choice' study of government inquiries. Acknowledging the diversity of inquiries, Trebilcock examines the government's rationale for choosing one inquiry type over another.⁴⁴ He contends,

...an understanding of the selection of the instrument of inquiry and the particular mode of inquiry must be found by analysing the instruments' characteristics and the way in which political decision makers would view these characteristics.⁴⁵

Trebilcock argues that while all modes of inquiry (i.e.: task forces, royal commissions) share the same objective, that is generating information and recommendations on a policy issue, each inquiry type offers certain advantages to the policy-maker. For example, royal commissions and task forces are often appointed when a minister wants to distance him or herself from a potentially controversial issue. Moreover, policy-makers are not compelled to implement the recommendations proposed by a royal commission. Other modes of inquiry, such as departmental committees, provide a direct link between the minister and the subject matter under investigation. This gives the minister more control over the agenda and scope of the investigation. The arms-length relationship between government and a royal commission insulates political officials from the work and findings of this mode of inquiry. However, a royal commission is not an attractive type of inquiry if government wants to control access to an inquiry's results. Royal commissions usually publish their reports and make them available to the general public. If a politician wished to keep the findings of the inquiry

⁴⁴Michael Trebilcock et al., *The Choice of Governing Instruments* (Ottawa: Economic Council of Canada, 1982).

⁴⁵Ibid, p. 38.

away from the public, he or she would choose task forces or departmental and interdepartmental committees given they are not obliged to report publicly.⁴⁶

Jenson's and Doerr's research recognises the link between royal commissions and society, and assign a more dynamic role to royal commissions in the policy process. They argue that royal commissions provide an important forum in society for the representation of ideas and interests, and in doing so, may generate new ways of thinking about an issue. For example, several royal commissions, including the Royal Commission on Bilingualism and Biculturalism, the Le Dain Commission on the non-medical use of drugs, and the Berger Inquiry, have produced recommendations that have shaped social attitudes on important social issues. As Berger explains in his analysis of the Mackenzie Valley Pipeline Inquiry,

Royal Commissions and Public Inquiries in the past have brought new ideas into the public consciousness. They have expanded the vocabulary of politics, education and social science. They have added to the furniture that we now expect to find in Canada's storefront of ideas.⁴⁷

Viewing the decision to establish an inquiry solely in terms of its investigative or political functions neglects the influence of royal commissions' on a policy or societal discourse. As Le Dain explains, the choice to "institute an inquiry of this kind is a decision not only to release an investigative function but a form of social influence as well"⁴⁸ Following this line of argument, it becomes important, therefore, to examine the role of royal commissions in the social production of knowledge.

⁴⁶Ibid.

⁴⁷Thomas Berger, "The Mackenzie Valley Pipeline Inquiry", *Queen's Quarterly*, Vol. 83, No. 1, (Spring 1976): 25.

From technocracy to discursive practices: the institutional adaptability of royal commissions

A salient feature of royal commissions continues to be their institutional adaptability. From Canada's earliest Royal Commission on the Civil Service in 1868 to the most recent Royal Commission on Aboriginal Peoples, royal commissions have adapted their organisational design and practices, in particular their public hearings and research activities, to meet the political, social and administrative needs of the day. Prior to the 1930s, public hearings held by royal commissions usually performed a very narrow investigative function. Prior to the Rowell-Sirois Commission, royal commissions were usually small, narrow in scope, and headed by a single commissioner. As Hodgetts argues, these early commissions represented a quasi-judicial form of inquiry. "In composition, procedures and reporting, the traditional royal commissions were akin to an *ad hoc* circuit court with carefully delimited terms of reference".⁴⁹ This formal judicial atmosphere was reinforced by the reliance upon judges and lawyers as commissioners and commission counsel, respectively. The quasi-judicial inquiries represented by early royal commissions relied heavily upon the testimony of witnesses and government experts during public hearings. The final reports drew exclusively from this evidence.

As issues confronting the Canadian state became broader and more complex, the judicial form of inquiry that characterised early commissions ceased to be effective. Different skills and procedures were needed to address emerging problems and changing demands. The new model of royal commissions, exemplified by the 1937 Rowell-Sirois Commission on Dominion-Provincial Relations, responded to these changes by assigning

⁴⁸Gerald Le Dain, *Commission of Inquiry into the Non-Medical Use of Drugs: Final Report*, 1973: 85.

a pivotal role to social scientists, thereby altering both the size and make-up of commission staffs.

The central role played by social scientists became the feature that differentiated the 'new' model of royal commissions from the 'old' model. In the new model of royal commissions, public hearings were downgraded and large research staffs became commonplace. Royal commissions, especially those dealing with broad social and economic issues, increasingly resembled small government departments. As Doern argues, "The assembling of teams of experts into a staff of several hundred for a two-or-three-year period places the staff of a royal commission in a quasi-departmental status".⁵⁰ As such, the staff-commission relationship became the primary means of communicating information and soliciting opinions. Public hearings were deemed less useful for the fact-finding mission of royal commissions.

The Rowell-Sirois Commission signalled a change in the role of social science research in royal commissions for it was the first to hire outside experts to undertake 'special studies'.⁵¹ Prior to this, social scientists were called upon as witnesses, offering their expertise to commissioners during public hearings. Beginning with the Rowell-Sirois Commission, royal commissions increasingly centred their work on special research studies and became major sources of support for mission-oriented research in the social sciences.⁵² The prominent role of social science research in the Rowell-Sirois

⁴⁹ Hodgetts, 1968.

⁵⁰ Doern, 1967: 424.

⁵¹ Henderson, 1967.

⁵² Fred Schindler and Michael Lanphier, "Social Science Research and Participatory Democracy in Canada", *Canadian Public Administration*, 1968.

Commission reflected the emergence and growing influence of the policy analysis profession in public affairs during the 1930s and 1940s.

The Royal Commission on Bilingualism and Biculturalism (the B & B Commission) also constituted an important turning point in the relationship between the social sciences and public policy. The Commission drew from the expert knowledge of many prominent social scientists found in disciplines other than economics. In doing so, it legitimised political science and sociology as policy-relevant disciplines and allowed non-economists to participate in the policy process as experts rather than critics. While not challenging the pre-eminent role of economists in the research programs of future royal commissions, the B & B Commission broadened the notion of policy expert to include researchers from other disciplines. As Brooks and Gagnon assert:

The near hegemony of economics that characterised royal commission research before the B & B Commission has been broken, although closer inspection of the studies undertaken for these later royal commissions demonstrates that economists continue to dominate in terms of the proportion of research for which they account.⁵³

The B & B Commission marked the consolidation of social scientists as policy experts. Drawing from a wide range of academic disciplines, the Commission produced over 120 research studies on issues related to the relationship between Canada's two major language groups, the English and French. Royal commissions appointed after the B & B Commission continued to establish large, multi-disciplinary research staffs. For example, the 1967 Royal Commission on the Status of Women produced 34 studies in the areas of anthropology, economics, history, law, sociology and psychology, while the

research program of the Macdonald Commission on the Economic Union and Development Prospects drew from economics, political science, and law.⁵⁴ This broad range of social science research continues to be reflected in the research programs of most recent commissions like the Royal Commission on New Reproductive Technologies and the Royal Commission on Aboriginal Peoples.

Doern and Hodgetts attribute the downgrading of public hearings to the growing need for expert knowledge due to the growing complexity of social and economic problems. Hodgetts argues that public hearings are most effective when royal commissions are used to gauge public opinion or educate the public on future government policy. Hodgetts cites the example of the B & B Commission, which was appointed to educate the public on an already existing policy and determine the best way of attaining a bicultural and bilingual state. Hodgetts' argument is based on a very narrow conception of public hearings that depicts them as tools of legitimization, used to generate public support for the final report. In this regard, public hearings offer little in terms of policy-making, especially in the area of complex social and economic problems. This position essentially conceptualises policy-making as the exclusive domain of professional experts. Hodgetts shares this viewpoint when he argues:

⁵³ Stephen Brooks and Alain Gagnon, *Social Scientists and Politics in Canada: Between Clerisy and Vanguard* (Montreal: McGill University Press, 1988), 36.

⁵⁴ Jane Arscott, "Twenty-Five Years and Sixty-Five Minutes After the Royal Commission on the Status of Women", *International Journal of Canadian Studies* 11, Spring, 1995; Alan Cairns, "Reflections On Commission Research", in Paul Pross, ed., *Commissions of Inquiry* (Toronto: Carswell, 1990); Brooks and Gagnon, 1988.

This realm comprehends the major, recurrent social and economic issues, which by definition are so complex that the views of the general public cannot be expected to contribute much to the formulation of public policy (hence the down-grading of public hearings). This is not an anti-democratic argument; it is simply an acceptance of the hard consequences of the technologically advanced society in which we live and in which objective, professional analyses are required.⁵⁵

This position is embedded in the conventional model of governance, which prescribes a neutral public administration and adheres to the ideology of technocracy.⁵⁶ Within this framework, policy-analysis is regarded as the exclusive domain of professional experts. Hodgetts' dismissal of public hearings, which is rooted in a technocratic understanding of policy analysis, does not acknowledge the representational function of royal commissions. This representational function is underscored by the central role assigned to public hearings in recent royal commissions, including the Royal Commission on New Reproductive Technologies, and the Royal Commission on Aboriginal Peoples. The following pages will examine the role of public consultations in royal commissions.

The representational function of royal commissions

The ideology of technocracy greatly influenced the practices of royal commissions during the 1950s and early 1960s. However, since then, public consultations have become a central component of large policy-formulating royal commissions. The advent of social movements on the political scene, accompanied by identity politics and the 'quality of life' discourse, led to increased demands for public

⁵⁵ Hodgetts, 1964: 488.

⁵⁶ Charles Fox and Hugh Miller, *Postmodern Public Administration: Towards Discourse* (Thousand Oaks: Sage Publications. 1995).

participation in state activities. Royal commissions, through their extensive public hearings, provided alternative avenues for the representation of groups and individuals that have traditionally been excluded from official government deliberations on a policy issue.

Conventional accounts of royal commissions as mechanisms for public participation have primarily focused on the issue of legitimation.⁵⁷ By allowing groups and individuals to participate in the policy process, royal commissions are said to enhance the legitimacy of government policy in the eyes of the public. The public will more readily accept decisions when it feels its views have been considered. The legitimation function of public hearings is further enhanced when royal commissions have been established to educate the public on government policy and obtain its support. For example, the public hearings of the B & B Commission were primarily used to solicit support for the idea of an equal partnership between English-speaking and French-speaking Canadians and to educate, "the Canadian people and return them to the spirit that originally governed the Confederation."⁵⁸

In the political economy literature, the concept of legitimation is embedded in a particular view of the state in capitalist societies. According to some neo-Marxist perspectives, the state performs a variety of functions in order to maintain the existing capitalist economic order. The capitalist state's primary goal is to facilitate profitable capital accumulation through its decisions and non-decisions. Along with its repressive functions, for example the maintenance of law and order, the state also achieves its goal by fostering legitimation for the present system. Miliband argues that legitimation is a

⁵⁷Hodgetts, 1964; Doern, 1967; Wilson, 1971.

central feature of the state's cultural-ideological function in capitalist societies, which involves the fostering of consensus in regard to the existing social order, as well as the discouragement of 'dissensus'.⁵⁹ Within this framework, mechanisms for citizen participation, indeed, the very ideology of citizenship, legitimise inequalities generated by capitalism. By extension, therefore, the public hearings of royal commissions go beyond enhancing the legitimacy of government decisions in the eyes of the public to include the broader task of maintaining the capitalist social order.

In the public administration literature, royal commissions, as mechanisms for public participation, are often depicted as a means to an end, the end being maintaining the *status quo*. In this regard, public hearings are said to offer little 'value added' to a commission's final report. This depiction is based on a very limited understanding of royal commissions as institutional sites for representational politics. Detractors of royal commissions argue that their recommendations and outcomes tend to ignore perspectives that do not conform to prevailing understandings of policy issues or to government agendas. Therefore, while public hearings may provide a forum for the representation of a broader range of actors and perspectives in a policy debate, this representation does not translate itself into concrete government action. Drache and Cameron argue this point in their analysis of the final recommendations of the Macdonald Commission. The authors argue that calls for greater government intervention in Canada's economic development by labour groups and women's organisations did little to alter the pro-market stance of the Commission's deliberations and final recommendations.

⁵⁸ Doern, 1967: 423.

⁵⁹ Ralph Miliband, *Marxism and Politics* (Oxford: Oxford University Press, 1977), 90.

This interpretation of a royal commission's public hearings clearly measures the success of representation in terms of their ability to influence and alter recommendations and government policy. The drawback to this approach is that it regards the final report and government policy as the primary if not sole *raison d'être* of royal commissions. While royal commissions, as advisory bodies, are indeed appointed by governments of the day to generate policy recommendations, they also serve a larger function as facilitators of public learning. They provide citizens and social groups the opportunity to examine their own interests and formulate their own ideas about new policy issues.

Moreover, commissions often provide the impetus for interest group organisation and mobilisation. For example, the 1967 appointment of the Royal Commission on the Status of Women became the rallying point for feminist activism and mobilization in Canada. Indeed, the Commission spawned an organisation that today continues to be an influential actor in the Canadian political landscape -the National Action Committee on the Status of Women. It is therefore important to evaluate royal commissions not only in terms of their final products, the reports, but also in terms of their contributions to policy discourses and to the political engagement of interested individuals and groups.

Located outside conventional institutions of electoral politics and interest group channels, royal commissions carry out a number of representational tasks.⁶⁰ Their consultative processes are especially designed to ensure the participation of affected interests that do not normally have access to regular policy processes because of insufficient resources.⁶¹ Moreover, commissions create a fertile arena for the

⁶⁰Jenson, 1995.

⁶¹ Peter Aucoin, "Contributions of Commissions of Inquiry to Policy Analysis: An Evaluation" in Paul Pross, ed., *Commissions of Inquiry* (Toronto: Caswell, 1990), 201.

development and representation of a broad range of views on complex policy issues. By providing opportunities for public involvement in policy-making and relying upon social science research, the royal commission is a system of representation which generates and maintains ideas about who we are as well as about policy options. As Jenson argues, royal commissions,

...have not simply listened to the expression of interests by groups: they have also contributed to the way that we subsequently conceptualised our interests and collective identities, whether based on nation, class, gender or citizenship.⁶²

To varying degrees, royal commissions have given marginalised groups and individuals the opportunity to have their voices heard by decision-makers. As the on-going policy process becomes increasingly dominated by closed consultations between state bureaucrats and institutionalised interest groups, groups or individuals with fewer resources will turn to other avenues for representation. Royal commissions, through their public participation methods, have provided one such avenue. As Aucoin explains:

The requirement that commissions actively seek out the broadest 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.⁶³

In their efforts to increase citizen participation in the articulation and formulation of public policy, royal commissions have adopted various ways to recruit the personal views of citizens. The most common practices are the call for submissions and nationwide public hearings. The 1967 Royal Commission on the Status of Women went on a

⁶² Jenson, 1995: 45.

⁶³ Aucoin, 1990: 201.

cross-country tour in the late 1960s to hear from individual women and women's groups from all parts of Canada. The Commission set out to solicit opinions on the issue of women's economic and social conditions and possible policy solutions. It heard from 890 witnesses and received 468 briefs during the public hearings held in 14 cities and received over 1000 letters of opinion.⁶⁴ Moreover, the Commission organised its public consultations to facilitate the particular needs and circumstances of women. For example, public hearings were scheduled at times when women were most likely able to attend.⁶⁵

Moreover, in their effort to be inclusive, the Commissioners tried to elicit the views of a broad range of women, on the basis of ethnicity, religion, region, socio-economic status, and professional background. The public hearings also provided a forum for views that differed from the liberal-feminist stance adopted by the Commission. Several feminist organisations, like *Voice of Women*, presented submissions, which offered contending views on the source of women's secondary status in Canadian society. While these views did not alter the Commission's feminist liberal orientation, (which emphasised formal equality as opposed to substantive equality), they did yield some influence, especially,

⁶⁴ Jill Vickers, Pauline Rankin, and Christine Apelle, *Politics as if Women Mattered: A Political Analysis of the National Action Committee on the Status of Women* (Toronto: University of Toronto Press, 1993).

⁶⁵ Several royal commissions have gone beyond formal public hearings to ensure the participation of groups most affected by a policy issue. For example, the Le Dain Commission on drug use conducted some of their hearings in universities and colleges as well as some informal youth settings, like coffee houses and pubs, in order to hear their personal perspectives on drug use. See the *Final Report of the Commission of Inquiry Into the Non-Medical Use of Drugs*, 1973.

...in broadening the range of analysis available to the Commission, and in challenging the Commissioners' frame of reference by demanding that they incorporate more differences than perhaps the Commission would otherwise have been prepared to consider.⁶⁶

The Macdonald Commission on the Canadian economy also allowed for public participation through its extensive hearings. During these hearings, Commissioners were presented with competing visions of Canada's economic prospects. While a significant segment of the Commission's research, especially in the field of economics, was in favour of pro-business policies, such as free trade, the public hearings provided a forum for contending viewpoints. Commissioners heard from many individuals and groups who were critical of free trade and who were concerned with issues of social justice and equality.⁶⁷

Several critics, like Duncan Cameron and Daniel Drache, argue that the hearings process did little to open up the pro-market agenda of the Commission.⁶⁸ Cairns, on the other hand, has a more positive assessment of the commission's public consultations, arguing that the hearings not only heightened the Commissioners' awareness of the viability of possible policy recommendations but also exposed them to views and positions adopted by women's groups, which were not represented in the Commission's research work.⁶⁹

⁶⁶ Jane Arscott, "Twenty-Five Years and Sixty-Five Minutes After the Royal Commission on the Status of Women", *International Journal of Canadian Studies* 11 (Spring, 1995), 43.

⁶⁷ Richard Simeon, "Inside the Macdonald Commission", *Studies in Political Economy*, 22 (Spring 1987), 174.

⁶⁸ Daniel Drache and Duncan Cameron, "Introduction", in Daniel Drache and Duncan Cameron, eds., *The Other Macdonald Report* (Toronto: Lorimer, 1985).

⁶⁹ Cairns, 1990.

The 1974 Mackenzie Valley Pipeline Inquiry otherwise known as the Berger Inquiry best exemplifies the representational and discursive capacity of royal commissions. The federal government appointed the Inquiry to examine the social, economic, and environmental consequences of the building of a gas pipeline in northern Canada.⁷⁰ The inquiry adopted several practices to ensure the representation and involvement of all affected parties. First, the inquiry provided funds for a variety of environmental and aboriginal groups who lacked the resources to carry out their own research. This was the first time the Canadian government funded groups coming before inquiries or commissions.

The inquiry also set up both formal and community hearings. The formal hearings resembled a judicial process where expert witnesses were heard and cross-examined by lawyers. It was here where the evidence of a variety of experts was examined and debated. The community hearings, on the other hand, provided the forum for non-experts to voice their concerns over the construction of the pipeline. People in the northern communities were given the opportunity to speak in their own language and present arguments without being subjected to cross-examination. In fact, the Inquiry regarded the testimony of native elders and community leaders as evidence, at par with the research findings of experts.

In establishing two different types of hearings, the inquiry sought to legitimise both expert and non-expert forms of knowledge. As Berger explains, "We have tried in this way to have the best of the experience of both worlds, the world of everyday where most witnesses spend their lives, and the world of the professionals, the specialists, and

⁷⁰ Berger, 1976.

the academics.”⁷¹ Consequently, members of the northern community were able to link the construction of the pipelines to the broader issue of economic and social development in the North and Native land claims. While the inquiry’s success is attributable to a number of factors, which are unique to the inquiry itself, such as the talents of the Commissioner, Thomas Berger, it does reflect the capacity of royal commissions to represent different types of knowledge on a given policy issue.

More recently, the Royal Commission on Aboriginal Peoples (RCAP) has tried to extend the Berger’s Commission’s consultation principles to its research program and has developed and adopted innovative practices in an effort to democratise the research process. The Commission established ethical research guidelines and principles to ensure the involvement of Aboriginal peoples at all stages of the Commission’s research work, from the planning stages to the final review process. These guidelines were developed “to help ensure that, in all research sponsored by the Royal Commission on Aboriginal Peoples, appropriate respect is given to the cultures, languages, knowledge and values of Aboriginal peoples, and to the standards used by Aboriginal peoples to legitimate knowledge”.⁷² In establishing these guidelines, the Commission sought to include the perspectives of Aboriginal peoples in the Commission’s research and legitimise the use of orally transmitted knowledge in its work.⁷³

Both the Berger Inquiry and the RCAP attempted to reconcile the need for expert knowledge with the demand for democratic practices. They exemplified the capacity of royal commissions to draw upon different forms of knowledge on a given policy issue.

⁷¹ Ibid., 32.

⁷² Royal Commission on Aboriginal Peoples, *Integrated Research Plan*, 1993: 37.

⁷³ Wherrett, 1995: 279.

They tried to encourage discursive politics by shifting the locus of problem solving from policy engineers to a wider range of social actors. In so doing, they challenged traditional notions of policy analysis and offered innovative ways to actively involve and represent the different experiences and knowledge of citizens in the policy process.

The organisational design of royal commissions

In examining the nature of commission research and its role in the policy process, several researchers have focused their attention on the way in which they organise and structure their research activities and consultations with the public. They argue that a royal commission's particular organisational and institutional features greatly determine the type of research and recommendations it produces.

As an *ad hoc*, temporary institution conducting policy research, a royal commission enjoys a number of advantages over permanent departments or agencies. One of the major advantages of royal commissions is their ability to establish large research staffs from personnel found outside the public service. This feature encourages a perception of impartiality which departmental research is said to be lacking. However, despite these advantages, Schindler and Lanphier argue that the *ad hoc* and impermanent nature of royal commissions ultimately hinders the development of a consistent and integrated research program.⁷⁴

In his examination of the Macdonald Commission, Richard Simeon points to other institutional and organisational factors that may impede an integrated research plan. His analysis derives from his experience as one of the Commission's research

⁷⁴ Schindler and Lanphier, 1968: 968.

coordinators.⁷⁵ While acknowledging the pro-market bias of the Commission's recommendations, Simeon rejects the explanation put forward by Drache and Cameron. Instead, he argues that the segmented organisation of the Commission's research program shaped the conclusions put forward by the Commissioners. The decision to organise the research program into the three separate disciplines of political science, economics and law meant that much of the research in each field was being done in isolation from the others, with each discipline having a monopoly in a particular research area. This meant that economic issues were largely being looked at by economists, free of any input from the expertise of the other two disciplines. Moreover, given that the neo-classical perspective is the dominant paradigm within economics, it was not surprising that the Commission's research on the study recommended market driven solutions. In the end, disciplinary norms rather than class bias produced the pro-market stance of the Commission's policy recommendations.⁷⁶

Cairns supports this argument in his assessment of the Macdonald Commission's research program.⁷⁷ He argues that the lack of an integrated research plan can be traced to challenges inherent in every large royal commission, such as the lack of both routinisation and bureaucratic memory within royal commissions, as well as the hindering effects of time constraints on the development of well-defined tasks and directions. Cairns cites time constraints as having been a contributing factor to the exclusion of alternative perspectives in the final report of the Macdonald Commission. As Cairns explains,

⁷⁵Simeon, 1987:168.

⁷⁶Ibid., 171.

⁷⁷Cairns, 1990: 98.

Time constraints worked against the Commissioners' assimilation of the several hundred research reports, which, in successive versions, escaped their mailboxes in the period leading up to the final report. Not surprisingly, not all of the research was available at the time when commission decisions on policy had to be made.⁷⁸

Like Simeon, Cairns cites the segmented organisation of the research program as one of the underlying reasons for the Commission's failure to achieve an integrated research program. However, he also attributes this failure to the lack of communication between the Commissioners and the research teams. This lack of communication is a product of what Cairns describes as the 'fruitful' tension between researchers and commissioners. The tension arises from the conflicting values and goals each party brings to a commission and to its research work. For example, Cairns argues that a royal commission's decision to publish its studies creates a research process that is relatively isolated from the Commissioners. Researchers are primarily concerned with meeting academic standards and contributing to their field while Commissioners evaluate research findings in terms of their relevance to the writing of the final report.⁷⁹

Another organisational feature that influences the research process is the make-up of the commissioners. Cairns argues that the custom of appointing individuals with diverse backgrounds and interests undermines the development of an integrated and focused research program. As Cairns explains, the effort,

⁷⁸ Ibid., 99.

⁷⁹ Ibid.

...to enhance a commission's legitimacy by making the commissioners a microcosm of the social divisions they seek to transcend puts an inappropriately heavy burden on commissions to mobilise consent and detracts from their more intellectual task of education and policy clarification.⁸⁰

Conversely, the appointment of commissioners with similar professional backgrounds or values may privilege a set of theories, paradigms and methodologies over others in a Commission's research program. Scott's analysis of the Macdonald Commission examines how the make-up of the Commissioners influenced the direction of the research and its final recommendations.⁸¹ He argues that the Commission's championship of market-oriented policies can be traced to the overriding involvement of economic experts on the Board and the lack of constitutional experts or political scientists. The Royal Commission on New Reproductive Technologies' research program was also criticised for being biased in favour of reproductive technologies because of Chairperson Baird's background in genetics. In both cases, commissioners were said to have acted as 'managers of legitimization', exerting a conservative influence on the research program in an effort to maintain the *status quo*. However, while these royal commissions highlighted the conservative influence commissioners can exert on a research program, other commissions or inquiries, like Berger's Mackenzie Valley Pipeline Inquiry, revealed how a commissioner's progressive views on public consultations led to a deeper understanding of the pipeline's impact on the North's Aboriginal communities. Commissioners, therefore, can also play a crucial role in maintaining an open research agenda, thus allowing different perspectives to be heard.

⁸⁰ Ibid., 92.

⁸¹ Anthony Scott, "The Macdonald Report: The Reviews in Review", *Canadian Public Policy*, XII, Supplement: 1-10, 1986.

Another important feature of royal commissions that influences the type of research and recommendations produced is what Jenson calls their 'learning' process. While critics of royal commissions argue that they offer little value to a policy debate, Jenson's assessment of commission research emphasises its innovative capacity. She argues that in many instances, royal commissions, through their research and consultations, have led to a paradigm shift in a particular policy area. The development of new ideas is linked to the learning processes of royal commissions. For example, Jenson argues that a Commission's research process provides a forum for learning on the part of commissioners, the researchers, and the public. In looking at royal commissions, Jenson discerns several models of learning based on the different ways commissions process ideas and utilise information in order to facilitate learning.⁸²

The first model she identifies is the production of knowledge through interaction for which there are two variants. In the first variant, the research process is characterised as a continuous dialogue between researchers and commissioners wherein commissioners are able to influence the research program as their own views evolve. Typifying this model of learning is the B & B Commission, which established research seminars in which researchers presented their findings to Commissioners and engaged in a dialogue with them. The second variant of the 'knowledge-through-interaction' model is found in royal commissions where commissioners themselves develop the framework for the research agenda. In this model, the views of commissioners influence the direction and orientation of the research program. In both variants of the 'knowledge-through-interaction' model, researchers primarily function as policy advisors. As Jenson explains,

⁸² Jenson, "*Commissioning Ideas*", 56.

"they operate as the bearers of ideas to the commission, but these are analysts who themselves are familiar with the particular needs of the commission as it constructs its recommendations."⁸³

Another model of learning is exemplified by the experience of the Macdonald Commission. In this Commission, there was little dialogue between Commissioners and researchers. Information derived from hearings and research projects was gathered and parsed for meaning by research coordinators responsible for writing the Final Report. For this reason, the views of commissioners, as well as those heard during the public hearings, did not influence the research program. As Cairns revealed earlier on, researchers regarded themselves as independent academic researchers rather than policy advisors. As such, the research they produced was geared towards satisfying academic standards rather than the needs of Commissioners.

The last model of learning identified by Jenson is found both in the Berger Commission and the recent Royal Commission on Aboriginal Peoples. Unlike the previous model, this learning process is characterised by more democratic research practices and more opportunities for non-experts to influence the framing of a policy issue. This allows affected individuals and groups to participate equally with researchers in a policy debate. In this model, the experiential knowledge of non-experts is recognised and assigned the same status as expert knowledge. Research is viewed as a collaborative process, involving both researchers and affected groups at every stage of the research process. It is this last model of learning which reveals the innovative and democratic capacity of royal commissions as producers of knowledge. The research process

⁸³Ibid., 57.

established by the Commission on Aboriginal Peoples and the Berger Inquiry highlights a royal commission's capacity for participatory research. This process represents a different model of commission research that is more suitable for reconciling expert and non-expert perspectives on a policy issue.

Conclusions

As government instruments, royal commissions have been appointed for a variety of reasons, including: generating knowledge on a new problem, educating the public on existing government policies, and delaying action on a difficult or politically controversial topic. The literature reveals that royal commissions, over the years, have contributed to the advancement of knowledge in several academic fields including political science and history. Royal commissions have also been touchstones for the mobilisation of social groups and the representation of interests and identities that surround an issue. The Royal Commission on the Status of Women, the Berger Commission, and the Royal Commission on Aboriginal Peoples are the most notable examples of commissions that provided forums to segments of Canadian society traditionally marginalised from conventional political institutions. While some scholars view royal commissions as ineffective mechanisms for public input, others have highlighted their potential as legitimate forums for public deliberation on problems facing Canadian society. Indeed, the recent works of Jenson and Bradford have characterised royal commissions as innovative institutions in the policy process.⁸⁴

This study regards royal commissions as important sites for public deliberation on important social issues. They provide opportunities for both experts and non-experts to

participate in a policy debate. As Jenson and Bradford contend, royal commissions contribute to the 'framing' of a particular problem or issue in a society. They allow different actors from various backgrounds to articulate and at the same time contest dominant policy discourses and propose alternative understandings of issues.

Jenson's and Bradford's contributions to the literature suggest that royal commissions have the potential to broaden or redefine the terms of a policy debate. However, the question that remains is: Why are some Commissions more successful than others in recognising and incorporating different perspectives in a policy debate? The literature suggests a number of factors that may influence how a commission represents and incorporates alternative perspectives on the issues.

The first factor is the composition of the commission. The professional backgrounds of the people appointed to a commission provide them with an already established frame of reference for evaluating the issue at hand.⁸⁴

The second factor, suggested by Simeon, is the cognitive maps of experts hired by a commission. Like commissioners, academic researchers have particular understandings of an issue that are embedded in their particular disciplines. These cognitive maps help define the policy issue and legitimise certain methods of inquiry over others. Essentially, academic researchers help determine the parameters of the debate, the nature of the research work, and ultimately the commission's final recommendations.

The third factor that may influence the innovative potential of royal commissions is linked to the public hearings. As the case of the Berger Inquiry suggests, certain

⁸⁴ Bradford, 1994.

⁸⁵ Schindler and Lanchier, 1968.

practices encourage greater public participation in the debate. For example, a consultation program, which funds intervener groups to assist them in making their presentations to a commission, can help challenge preconceived ideas about the policy issue.

The fourth factor suggested in the literature is the way a commission organises its research work and public consultations. The organisational structure of commissions significantly influences the patterns of interaction and communication among its various subunits and the actors within them. For example, the bureaucratic separation of research teams from commissioners and public hearings may have an impact on the congruence between the research findings and the expectations of commissioners.

The fifth and final factor suggested by the literature is the outlook of commissioners and researchers regarding the use of research. Commissioners primarily view research as a form of policy advice while researchers may view their work as contributing to advancement of knowledge in a particular academic field. Divergence of views can also exist among researchers in a commission. Differences in professional experience and outlook can lead some researchers to view themselves either as policy advisors or as independent academics. These outlooks will determine whether commissioned research performs a conceptual, enlightenment function or whether it engages in instrumental problem solving. This, in turn, determines whether a commission introduces innovative ideas into a policy debate.

This dissertation will explore these issues in relation to the Royal Commission on New Reproductive Technologies. At the time of its appointment, the Commission was regarded as an important opportunity to recast the debate on reproductive technologies

from a purely scientific or medical matter to a social or public health issue. Over time, however, the Commission was criticised, both internally and externally, for siding with scientific and medical communities. Some critics argued that the Commission fell prey to the commercial and research interests of the bio-medical industry, while others pointed to the Chairperson's professional background as a geneticist as an explanation.

This dissertation will argue that the medical-scientific framing of the issue of reproductive technologies can be traced to three interconnecting features of the Commission:

- The Commission's organisational structure, such as its bureaucratic division of its research, analysis and consultation activities as well as the structure of the research program.
- Its preference for quantitative, fact-finding research versus qualitative studies.
- Its view of research as policy advice rather than discipline-oriented analysis.

The dissertation will explore how the interplay among these three features contributed to the unequal representation of perspectives in the Commission's work.

Chapter 3 - Ideas, Institutions, and Public Policy

Introduction

This chapter examines the literature on the interaction between ideas and institutions in public policy. It begins with an examination of ‘policy paradigms’ and ‘policy discourses’ as conceptual tools that help us understand the role of ideas in the policy process. The chapter then proceeds through an examination of the ‘policy-community’ approach, which links policy discourse to the cognitive maps of professional experts. This approach draws our attention to the manner in which experts, through their interaction with state officials, influence policy debates and delimit the policy options available to decision-makers. The approach will therefore help us understand the influential role of experts in the policy debate on reproductive technologies.

The next section places policy discourse and policy communities in the institutional context. It reveals how institutions, from party systems and federalism to an organisation’s routines and practices, filter ideas that contribute to our understanding of a policy issue. Finally, the chapter ends with an examination of the relevance of the neo-institutional approach to understanding the policy debate that emerged from the Royal Commission on New Reproductive Technologies. The main purpose of the chapter is to provide the theoretical framework to explain how the organisational attributes of the Commission contributed to a particular discourse on reproductive technologies.

Ideas and expressive action

The new emphasis on the role of ideas in the policy process draws our attention to what Phillip Heymann terms the expressive function of government action rather than its

instrumental function.⁸⁶ While the latter function explains government action as a rationalistic and optimal response to problems involving a calculated prediction of consequences, the expressive function stresses that government actions are shaped by well-defined social and philosophical beliefs and values shared by members of a society. Ideas underlying public policy are not limited to narrow and specialised concepts associated with a particular policy issue or field. Rather, ideas can and do include broad assurances and attitudes about our social reality.⁸⁷ The ways in which individuals view the world and their ideas of a just society help shape the type of actions pursued by government. Heymann argues that "...ideas about what is good for society are critically important for mobilising public action and that much public policy making thus depends on the persuasive power of ideas underlying it."⁸⁸ Heymann emphasises the importance of deeply held assumptions rather than calculated predictions in explaining government decisions. He argues that in most cases, government cannot successfully predict the consequences of alternative courses of action. The lack of complete information or scientific data is an inherent feature of many policy areas. For this reason, the actions and choices policy-makers pursue will reflect broader public philosophies.

According to Heymann, the state is not a passive agent responding to competing interests but rather it has a more dynamic function of influencing the general pattern of

⁸⁶ Philip B. Heymann, "How Government Expresses Public Ideas," in Robert Reich, ed., *The Power of Public Ideas* (Cambridge: Harvard University Press, 1988): 85.

⁸⁷ Weir distinguishes between two different meanings assigned to the term 'ideas' in the study of public policy. The first meaning encompasses broad concepts and values that make up public philosophies. The second meaning refers to technical or programmatic knowledge, or cause-and effect statements that are usually associated with experts. Margaret Weir, "Ideas and the Politics of Bounded Innovation" in Steinmo et al., eds, *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge University Press, 1992).

attitudes, beliefs, inhibitions, and social rewards which define the behaviour and expectations of individuals and groups. Government processes and institutions are not neutral forums for group politics; rather they express the material, social and moral conditions of a given society. Heymann states:

Our long-lasting institutions and government processes are not empty boxes into which we can pour our present purposes. They come surrounded with meaning and expectations and imbued with particular understandings of their mission and how it relates to the nature of human beings and group behaviour.⁸⁹

Ideas, in the form of argumentation, are also a central theme in Majone's examination of policy analysis and public deliberation.⁹⁰ He argues that policy-making should be understood primarily in terms of debate and argumentation, and to a lesser extent, in terms of influence, power, and interests. Argumentation becomes the primary vehicle by which ideas are communicated and knowledge disseminated. Majone writes:

Argumentation is the key process through which citizens and policy-makers arrive at moral judgments and policy choices. Public discussion mobilises the knowledge, experience, and interest of many people, while focusing their attention on a limited range of issues. Each participant is encouraged to adjust his view of reality, and even to change his values, as a result of the process of reciprocal persuasion.⁹¹

Argumentation and persuasion are especially important when addressing 'trans-scientific' issues, such as environmental protection, technological assessment, and nuclear safety. By 'trans-scientific' issues, Majone is referring to issues dealing with

⁸⁸ Ibid., 89.

⁸⁹ Ibid., 94.

⁹⁰ Giandomenico Majone, *Evidence, Argument, and Persuasion in the Policy Process*. (New Haven: Yale University Press, 1989)

⁹¹ Ibid., 2.

“questions of fact that can be stated in the language of science but are, in principle or in practice, unanswerable by science.”⁹² The scientific nature of these issues requires the involvement of technical experts in the policy debate. However, experts many times disagree on the validity of the facts, the causes of a problem, and effective courses of action. Moreover, these technological advancements have significant social implications that cannot be resolved or predicted by formal techniques of problem solving.

In the absence of hard data and up-to-date information, policy-making, even in highly specialised areas, is primarily informed by values and debate rather than formal proofs. Majone argues that policy-making involves public deliberation whereby participants come to exchange ideas and engage in mutual learning. Policy argumentation uses both facts and norms to persuade people to accept a particular interpretation of a problem and agree on possible solutions. As problems become more complex and multifaceted, facts cannot simply speak for themselves; their evidentiary power is intrinsically linked to the process of argumentation. As Majone explains:

Facts and values are so intertwined in policy-making that factual arguments unaided by persuasion seldom play a significant role in public debate. On the other hand, persuasion is needed in order to increase both the acceptability of advice and the willingness to act on less than conclusive evidence.⁹³

While both Majone and Heymann offer important insights into the independent role of ideas in the policy process, they do not explain the process in which ideas are translated into political action. For example, while Heymann argues that government action expresses public ideas, he does not explain why one set of ideas or beliefs are

⁹² Ibid., 3.

expressed while others are not. When a clear division of assumptions and beliefs exists concerning a policy issue, what factors motivate government choices? Heymann does not address this issue. Majone as well discusses the inherent persuasiveness of ideas in policy deliberations but remains silent on how these ideas come into existence in the first place. This issue is addressed in the following section.

Language, discourse, and public policy

In recent years, a set of studies has focused on the effects of social and political ideas on problem definition and government action. Much of this research emphasises how problems are constructed in the realm of private and public discourse. According to this post-positivist perspective, policy-making is best understood as a process whereby multiple interests and interpretations of reality compete through language. Language is the vehicle in which political actors and groups gain or lose legitimacy for their interpretations of a given issue. It is also through the use of language that certain groups gain ownership and control over a policy issue. Stories, metaphors and symbols are forms of language that influence and to some degree structure the process by which decisions are made and policy outputs chosen. Moreover, language is the primary mechanism through which ideas, perspectives, and identities are represented and created. As Phillips argues, “The focus on the importance of context is naturally coupled with an insistence that language is not a neutral or passive container of ideas, but an active force in knowledge. Language is seen to be constitutive, not merely expressive of concepts,

⁹³ Ibid.

and serves as the means through which people represent themselves as individuals and as part of collectivities.”⁹⁴

According to this approach, public problems are not embedded in incontestable social and economic conditions; rather they emerge and are defined through social interaction. For example, Spector and Kitsuse⁹⁵ and Best⁹⁶ conceptualise problem definition and agenda setting as claims-making activities whereby individuals and groups attempt to advance their interpretation of a particular issue. As Best explains, “Typification is an integral part of social problems construction. Claims-makers inevitably characterise problems in particular ways: They emphasise some aspects and not others; they promote specific orientations; and they focus on particular causes and advocate particular solutions.”⁹⁷ Policies, therefore, can best be described as frames of reference that define and communicate certain values, ideas, and interests that surround a particular issue. They are products of the broader social and political contexts that construct notions of democracy and citizenship, and delineate relations among affected groups. As Ingram and Schneider argue:

⁹⁴ Susan Phillips, “Discourse, Identity, and Voice”, in Laurent Dobuzinskis, Michael Howlett and David Laycock, eds, *Policy Studies in Canada: The State of the Art* (Toronto: University of Toronto Press, 1996)

⁹⁵ M. Spector and J.L Kitsuse, *Constructing Social Problems* (Menlo Park: Cummings, 1977).

⁹⁶ Joel Best, *Images of Issues: Typifying Contemporary Social Problems* (New York: Aldine de Gruyer, 1989).

⁹⁷ Ibid., xxi.

These social constructions yield interpretations and give meaning to several factors: the conditions of democracy, the events that are implicated in the emergence of an issue, the potential target populations involved in an issue, and the facts and values that come together into a coherent, credible scientific theory explaining causes and consequences.⁹⁸

Discourse is the primary mechanism in which ideas, beliefs, and attitudes are given meaning. Broadly defined, the term 'discourse' refers to the "ensemble of ideas, concepts, and categories through which meaning is given to phenomena."⁹⁹ Discourses determine the ways issues and problems are framed, and the representation of the collective identities surrounding them. Different actors advance competing discourses on the same issue based on their particular experiences and interests. Discourse analysis, as a tool in policy studies, is interested in uncovering the way in which ideas are created and diffused in the political system as well as their impact on public policies. Moreover, it examines why a certain set of ideas gains legitimacy among political actors and traces its influence on the claims-making activities of political actors that surround a policy issue.

The discourse analysis approach not only uncovers the knowledge claims of political and social actors, but also links them to historical and material circumstances and political struggle. Jane Jenson's concept of the 'universe of political discourse' exemplifies this approach as it recognises that ideas do not exist in a vacuum: Rather they are historically situated within broader social, economic and cultural structures. In essence, discourses are inextricably linked to political struggles and power relations and

⁹⁸ Helen Ingram and Anne Schneider, *Policy Design for Democracy*. (Lawrence: University Press of Kansas. 1997): 190.

⁹⁹ Maarten A. Hajer, "Discourse Coalitions", in Frank Fischer and John Forrester, eds, *The Argumentative Turn in Policy Analysis and Planning* (London: Duke University Press, 1993): 45.

not just the politics of language. "The political struggle that occurs within the universe of political discourse sets the boundaries of what are considered to be legitimate claims and relevant actors, determines the possibilities for alliances and advocacy strategies, and limits what are deemed by policy makers to be feasible options."¹⁰⁰

The 'universe of political discourse' is the area in which political actors and collective identities struggle for representation. In this universe, collective identities are attempting to draw social attention and legitimacy to their meaning systems and practices. The manner in which issues are politicised depends on the ability of collective identities to advance the institutionalisation of their meaning systems through a societal paradigm. Jenson defines a societal paradigm as:

A set of interconnected premises, which makes sense of many social relations. Every paradigm contains a view of human nature, a definition of basic and proper forms of social relations among equals and among those in relationships of hierarchy, and a specification of relations among institutions as well as a stipulation of the role of such institutions.¹⁰¹

This societal paradigm determines how issues and identities are defined and how social relations form. For example, Jenson argues that protective legislation in France before 1914, which emphasised infant protection and limitations on hours of work emerged from a paradigm that recognised women's identity of citizen-producer. In their attempts to improve women's economic and social status, feminist groups appealed to a prevailing discourse of women's citizenship that emphasised their role as mothers. However, by appealing to this discourse, they, in turn, aided in reproducing women's

¹⁰⁰ Phillips, 1996: 257.

¹⁰¹ Jane Jenson, "Paradigms and Political Discourse: Protective Legislation in France and the United States Before 1914," *Canadian Journal of Political Science* 22 (1989): 239.

identity as citizen-producer. Ultimately, the existing universe of political discourse both reflects and informs the meaning systems of political actors and the strategies they utilise to effect change.

Experts, cognitive maps, and policy communities

A large segment of the literature on ideas focuses on the role of programmatic or 'expert' ideas in the policy-making process. Knowledge is characterised as a crucial input to policy decisions. Singer defines knowledge, within a policy-making perspective, as "processes, structures or 'qualified' information, (information elements put into a meaningful structure)."¹⁰² As an input to policy decisions, expert knowledge contributes to our understanding of a particular issue, and provides the framework for formulating the strategies of political actors. Knowledge, in the form of studies and expert advice, can impact the choices and practices of policy-makers when they are designing programs. Moreover, as March and Olson explain, knowledge is a main element of the 'organisational repertoire' of policy actors which dictate the ways in which information is gathered, processed and coordinated among actors and among organisations.¹⁰³ At any given point, policy debates and struggles are perceived in terms of a pre-established cognitive context.¹⁰⁴

Policy discourses often emerge and acquire legitimacy through a complex network of political actors within policy communities. As analytical tools, the concepts

¹⁰² Otto Singer, "Policy Communities and Discourse Coalitions: The Role of Policy Analysis in Economic Policy Making" in *Knowledge: Creation, Diffusion, Utilisation*, Vol.11 No. 4, June 1990.

¹⁰³ James March and Johan Olson, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: Free Press, 1989).

¹⁰⁴ Singer, 1990.

of policy communities and policy networks emerged from a growing interest in policy-making processes found at the sector level. The theoretical and empirical shift away from macro-level factors to intermediate-level factors came about due to the limitations of 'grand-theories' in explaining different policies and different interest group activities cross-nationally.¹⁰⁵ The policy community and policy network approach developed from the need to explain the policy process and outcomes in specific policy spheres. 'Policy community' is a term used to describe the constellation and interaction of state and non-state actors who participate, to varying degrees in the development of particular policies. These actors can and do include interest group representatives, civil servants, politicians, and professional experts.

According to the policy community approach, policy formulation is influenced by the cognitive maps of experts who have an interest in a particular policy field and who attempt to influence it through their specialised knowledge. From Haas' concept of epistemic communities to Sabatier's discourse coalition,¹⁰⁶ the policy community approach reveals how issue identification and policy choices derive not from rational choice but rather from the advice of a 'knowledge elite' that share a common cognitive and normative framework. In this context, the framing of problems and the policies chosen to address them usually conform to the community's beliefs. As Haas explains:

¹⁰⁵ Kathleen Thelen and Sven Steinmo, "Historical Institutionalism in comparative politics", in Sven Steinmo, Kathleen Thelen, Frank Longstreth, eds, *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge: Cambridge University Press, 1992).

¹⁰⁶ Paul Sabatier, "An Advocacy Coalition Framework of Policy Change and the Role of Policy-Oriented Learning Therein, *Policy Sciences*, 21, 129-168.

The solidarity of epistemic community members derives not only from their shared interests, which are based on cosmopolitan beliefs of promoting collective betterment, but also from aversions, which are based on their reluctance to deal with policy agendas outside their common policy enterprise or invoke policies based on explanations that they do not accept.¹⁰⁷

Along the same vein, Hall's study of macroeconomic policy-making in Britain focuses on the role of experts inside the state whose economic theories were instrumental in influencing the Keynesian economic policies introduced by the British Treasury after WW2. Hall uses the term 'policy paradigm' to describe the prevailing framework of ideas that governs policy-making in a given area.¹⁰⁸ This policy paradigm defines and frames problems and goals and prescribes the appropriate instruments and actions that should be employed by governments. Once again, the norms shared by members of a research community, in this case economists, rather than efficiency concerns, largely determined the actions taken by government.

Like Hall, Singer contends that policy-making is very much influenced by the 'cognitive structures' of key policy actors. His analyses of economic policy-making in the 1970s and 1980s reveals how changes in the cognitive structures of policy actors and economic experts led to a shift from Keynesian economic policy to fiscal policies that placed a greater emphasis on market forces in the allocation of resources. This shift represented a change in the way policy-makers perceived the role of the state in economic affairs, which, in turn, significantly altered the relationship between key actors in

¹⁰⁷ Haas, 1992: 20.

¹⁰⁸ Peter Hall, "Policy Paradigms, Experts and the State: The Case of Macroeconomic Policy-Making in Britain, in Alain Gagnon and Stephen Brooks, eds, *Social Scientists, Policy and the State* (New York: Praeger, 1990).

economic policies. Cognitive structures are therefore important elements in the process of policy formation. As Singer explains, “Cognitive structures not only affect the preferences and options of political actors, they also affect the definition of the actor system”.¹⁰⁹

Bradford¹¹⁰ refers to actors in a policy community as ‘organised discourse definers’ and the interaction among them as ‘learning networks’ in which ideas and modes of analysis are channelled and popularised with the purpose of influencing state action. Learning networks are expressions of the “organisational intelligence of a political system, crystallising certain ideas and interests into operational discourses that clarify policy goals and map political alliances.”¹¹¹ In his comparative analysis of economic policy in Canada and Sweden, Bradford reveals how different learning networks in the two countries influenced unique national styles of economic policy-making in the 20th century. Like Jenson, Bradford argues that prevailing discourses and the learning networks from which they derive are embedded in broader historical patterns of political and economic development of a particular country.

The focus on discourse and policy communities reveals how policy problems, and the social identities surrounding them, are social constructs embedded in specific historical, cultural and social contexts. The discourse analysis approach offers an understanding of policy issues and debates “through investigating the specific contexts, discourses, and experiences of actors in these contested narratives.”¹¹² However, while discourse analysis offers important insights into the actors and knowledge claims that

¹⁰⁹ Singer, 1990: 422.

¹¹⁰ Bradford, 1994.

¹¹¹ Ibid., 86.

influence policy debates, it tends to ignore the institutional setting that give form to discursive interaction and communication. As revealed by Rein and Schon, policy discourses that take place in public forms often take on the norms and perspectives of the institution in which it takes place.¹¹³ For example, the rules and norms of an institution often determine the legitimacy of certain knowledge claims over others and ultimately their ability to influence policy debates. The ways in which institutions frame policy discourses are discussed in the following section.

Neo-institutionalism and public policy

The emergence of the behaviouralist paradigm within the social sciences in the 1950s and 1960s prompted the institutional perspective within political science to go beyond formal structures and institutional arrangements and examine how these institutions impact the beliefs, values and informal distribution of power among individuals and groups. Neo-institutionalism emerged as a reaction to the limitations of behaviouralism in explaining social and political phenomenon. Behavioural analysis, which explains political outcomes solely in terms of people's attitudes, values, and motivations, could not tell us how values and motivations are determined or the impact of these outcomes on a political community. Proponents of Neo-institutionalism introduce institutional arrangements as important explanatory variables in the study of group behaviour and public policy. As Thelen and Steinmo argue, Neo-institutionalism is

¹¹² Phillips, 1996: 259.

¹¹³ Martin Rein and Donald Schon, *Frame Reflection: Toward the Resolution of Intractable Policy Controversies* (New York, Basic Books. 1994).

concerned with the institutional factors that account for variations in political behaviour and policy outcomes cross-nationally.¹¹⁴

Historical institutionalism and rational choice¹¹⁵ are the two main approaches to emerge from this perspective. These approaches are rooted in very different assumptions and interpretations of the relationship between human behaviour and institutions.

Rational choice begins with the assumption that human beings are rational actors seeking to maximise their utility in a self-interested manner. Institutions provide the 'rules of the game' that constrain an individual's behaviour and structure the policy choices available to individual players. As Steinmo and Thelen explain,

...political and economic institutions are important for rational choice scholars interested in real-world politics because the institutions define (or at least constrain) the strategies that political actors adopt in pursuit of their interests.¹¹⁶

Within the rational choice perspective, institutions are defined as rules and procedures that shape the strategies available to individuals and which, in the end, ensures, stable and efficient political outcomes.

While the rational choice perspective makes a number of contributions to the study of institutions in political science, there remain several problems with this approach. The first issue involves the origins of preferences. Rational choice takes individual preferences as a given, assuming that they are exogenous to the institutional settings. It does not consider the possibility that institutions themselves influence and

¹¹⁴ Sven Steinmo, Kathleen Ann Thelen, and Frank Longstreth, *Structuring politics; historical institutionalism in comparative analysis* (Cambridge: Cambridge University Press, 1992).

¹¹⁵ March and Olsen, 1989.

shape the preferences of individuals and groups. This narrow interpretation of institutions as rules and procedures neglects their dynamic function and innovative capacity and their ability to define the goals as well as the strategies of individual actors. Another weakness with this perspective is its assumptions about human behaviour. The characterisation of individuals as self-interested, utility-maximising individuals is restrictive and does not consider the possibility that an individual's action is a result of ideological or cultural factors rather than a strategic calculation of costs and benefits.

Historical institutionalism provides a more dynamic account of institutions. It recognises their capacity to alter values and preferences of individuals and groups. While acknowledging the importance of formal structures, historical institutionalism places equal importance on the informal rules and norms that structure the actions and goals of political actors. As Steinmo and Thelen explain,

By shaping not just actors' strategies (as in rational choice), but their goals as well, and by mediating their relations of cooperation and conflict, institutions structure political situations and leave their own imprint on political outcomes.¹¹⁷

Historical institutionalism focuses on the interaction between intermediate-level institutions, like party systems and the structure of economic interests groups, like unions and business associations, and policy outcomes. While not ignoring macro-level structures, like class structure, historical institutionalism is more concerned with how these structures are influenced by intermediate institutions thereby avoiding the structural determinism that plagues Marxist theory. While this approach does not have the 'brutal

¹¹⁶ Steinmo, Thelen and Longstreth, 1992:7.

¹¹⁷ Ibid., 9.

elegance' of rational choice theory, it does take into account the complexities of the political process and thereby offers a more complete account of policy-making. Moreover, proponents of this perspective recognise the innovative potential of institutions, arguing that policy change can occur within stable institutions and that institutions themselves can and do experience change. Historical institutionalism highlights the dynamic relationship between ideas and political institutions and the manner in which certain institutional arrangements encourage or hinder policy innovation.

While both of these neo-institutional perspectives offer important insights into the role of institutions in politics, the complexity of the policy process precludes a general judgment on the direct influence of institutions on outcomes. This point is made by Atkinson who argues that any attempt to establish a direct causal relationship between policy outcomes and institutions is futile. He asserts that there is a "strong element of indeterminacy in both interpretations of institutional effects."¹¹⁸ Focusing his analysis on policy learning and access, Atkinson contends the character of the policy field has an important impact on the exclusivity of the process. For example, some policy areas are highly exclusionary not because of their institutional arrangements but rather due to the nature of the 'goods' being produced. Moreover, with regards to policy learning, it is unclear whether institutions encourage ideational innovation or whether they adapt to changes in the external cognitive maps. Ultimately, Atkinson argues that institutions can both constrain and create opportunities for change or innovation depending on the unique characteristics of the policy field and the policy issue in question. "There are simply too

many other constraints on policy and too many ways in which institutions matter differently in different settings.”¹¹⁹ It is therefore important to include other casual variables in an institutional analysis of policy outcomes and policy change.

Ideas, discourse, and institutions in public policy

Neo-institutionalism explores the interaction among ideas, interests and institutions and its implications for politics and public policy. Traditionally, institutions were perceived as inherently conservative forces in the policy process, resisting change or innovation. Bureaucratic rules, standard operating procedures and bureaucratic territoriality could only allow incremental changes to existing policies. Recently, however, this conservative perspective is being challenged by several studies that reveal the innovative capacity of institutions. Researchers like Hall, Weir¹²⁰, and Steinmo reveal how institutional settings facilitate the infusion of ideas into the policy process. They argued that institutions act as vehicles for the transmission of ideas and provide opportunities for the reconceptualisation of a policy issue. This subsequently alters the policy choices available to decision-makers. Institutions help determine which ideas get channelled into the policy debate, and the meanings attached to policy choices. As Margaret Weir explains, institutions are involved in the process that creates incentives for political actors and narrows the number of ideas and policy choices available to them.

¹¹⁸ Michael Atkinson, *Governing Canada: Institutions and Public Policy* (Toronto, Harcourt Brace Jovanovich, 1993): 45.

¹¹⁹ Ibid.

¹²⁰ Margaret Weir, “Ideas and the politics of bounded innovation” in Steinmo et al., eds, *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge University Press, 1992).

Institutions, therefore, delineate the boundaries of the policy debate as well as opportunities for innovation.

Peter Hall defines institutions as “the formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals in various units of the polity and economy.”¹²¹ This widely used definition encompasses a broad range of institutions including macro-level institutions like the economy, federalism and the state to specific characteristics of government institutions. However, unlike earlier forms of institutional analysis, which centred on detailed descriptions of formal institutional arrangements in different countries, neo-institutionalism is primarily concerned with uncovering the influence of both formal and informal rules and procedures on the political behaviour of individuals and groups.

Neo-institutionalists do not contend that institutions alone determine policy outcomes. Rather, they situate institutions within a broader analytical framework that includes ideas, collective identities and interests. It is the interaction between these variables that determine policy outcomes. Within this framework, institutions contribute to the way individuals and groups construct and articulate their views as well as delineate the boundaries of appropriate political behaviour. Moreover, institutions determine ‘the rules of the game’ that structure the exchanges and power relations among political actors on a given policy issue. According to Hall, institutional configurations often work to favour or privilege one set of groups over others in terms of the influence they wield over policy.

¹²¹ Peter Hall in Steinmo et al., eds, *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge University Press, 1992): 96.

Weir argues that the organisation of political institutions greatly impacts how groups define their interests and their choice of collective strategies. Policy preferences are not static or ahistorical; rather they are products of political institutions that guide the development of policy ideas and group interests. As Weir explains,

By channelling the way groups interact in politics and policy-making, these institutions greatly affect the possibilities for diverse groups to recognise common interests and construct political alliances and often determine whether such alliances are necessary.¹²²

Another factor which influences how groups define their interests is the way a given policy is 'packaged'. The 'packaging' of a policy refers to its linkage with other related policies and ongoing political struggles in the political system. The identification of an individual policy with other issues contributes to the way groups define their preferences and interests and often determines the type of political alliances that form among groups and between groups and public officials. Weir argues that viewing individual policies as packages and therefore locating them within a broader framework of past policies and strategic alliances helps explain why, despite government intentions, innovation does or does not take place. As Weir explains,

Politicians seek to affect these processes of group interest identification and alliance formation, but a variety of strong inertial forces limit what they can do. Interests attached to established policies could obstruct later efforts to reorganise policy along new lines. The political terms on which policies are first introduced may also block later efforts to mobilise support.¹²³

¹²² Weir, 1992: 194.

¹²³ Ibid.

While Weir characterises the relationship between ideas, institutions and interests as one of 'bounded innovation', other neo-institutionalists assign a greater innovative capacity to institutions in the policy process. Hall's analysis of British macroeconomic policy in the 1970s and 1980s demonstrates how institutional frameworks and the political interaction they shape have the potential to contribute to a paradigm shift in a given policy area.¹²⁴ His research over the years has focused on the impact of the institutional configuration of the British system on the level of macroeconomic policy innovation during the 1970s. His research found that while the British Treasury was steadfastly holding on to Keynesian economic instruments, the Conservative party along with the Bank of England became the vehicles for the injection of monetarist ideas in Britain's macroeconomic policy. Due to the high level of autonomy and power assigned to ruling parties in the British parliamentary system, Thatcher's government was able to develop and implement an alternative economic plan to the Keynesian policies previously supported by the Labour Party. Other important institutions, including the Bank of England, the media, and newly established economic institutes, further enhanced the legitimacy of monetarism as a prescription for Britain's economic and financial woes. Institutions in the British political system therefore provided incentives as well as constraints for the introduction of new ideas into the policy process and the subsequent shift between policy paradigms, that is, from Keynesianism to monetarism.

In his analyses of the influence of policy institutions on British economic policy, Hall distinguished three levels of institutions that have a particular influence on policy outcomes. The first level of institutions is macro-level economic and political structures

¹²⁴ Hall, 1992: 107.

that impose wide-ranging limits on the types of policies pursued by governments. These macro-level institutions are associated with a democratic society and can include capitalism and the electoral process. The second level of institutions includes organisational attributes of the state and society, which influence the distribution of power and resources among groups and the types of policies that are ultimately pursued. These institutions include organisational features associated with the broad political system, such as federalism, the constitution, and the party system. The organisational structure of interest groups and their relationship to state institutions are also important factors that influence policy outcomes. The last level of institutions that influence policy are the organisational culture, routine practices and standard operating procedures of a particular government agency or organisation. Hall argues that while these institutional features are more difficult to demarcate than broader, more basic organisational arrangements, like party systems and the structure of the state, they nonetheless yield some degree of influence on policy decisions. As Hall explains:

As a group, institutional factors of this sort are more mutable than those at the preceding levels: A regulation is changed more readily than a regime. However, routines and regulations of this sort are far from transitory. They can privilege some kinds of initiatives or the interests of some social groups over others with great consequences for the distribution of power and the direction of policy.¹²⁵

Hall's analyses of economic policy in Britain reveals how the standard operating procedures and decision-making routines of the Treasury in Britain, were unable to anticipate and respond to changes in the economy during the 1970s. This, in turn,

¹²⁵Ibid., 97.

undermined the viability of the Keynesian model as a solution to inflation and rising unemployment. As Hall explains,

...a Keynesian approach to economic management had been routinised into the standard operating procedures of the Treasury. They were built into the econometric model that became increasingly central to policy-making in the early 1970s. It was the failure of this model, built on estimates of past economic relationships, to anticipate the changing relationships in the economy during the 1970s that led to many mistaken forecasts and growing disillusionment with Keynesianism itself.¹²⁶

However, it is important to note, as Hall does in his analyses, that the organisational features of the Treasury Board were one of several institutional factors that contributed to a shift in economic policy paradigms.

Schon and Rein's¹²⁷ research on institutions examines how an institutional setting frames the discourse on a policy issue. They characterise institutions in the policy process as policy forums - institutional settings in which policy debates take place. They argue that the decision-making procedures and organisational attributes of policy forums influence the discourse that defines a policy issue. "The institutional context may carry its own characteristic perspectives and ways of framing issues or it may offer particular roles, channels, and norms for discussion and debate."¹²⁸ Institutional settings are important because they are accompanied by their own ways of framing an issue or problem and they often determine the mechanisms, standards, and rules for participation and debate. Discourse, therefore, tends to incorporate the norms of the institution in which it is embedded. As Rein and Schon point out in their analysis of policy discourses,

¹²⁶ Ibid., 108.

¹²⁷ Schon and Rein, 1994.

the adversarial nature of courtroom procedures and practices prevents individuals from voicing doubts regarding their own positions.¹²⁹ Every public forum, be it the media, the legislature, or public inquiries, has its own institutional norms that serve to shape a specific policy debate and designate the salient actors. The norms governing avenues of participation and representation are often the most highly contested features of the institutional setting. As Rein and Schon explain,

Among the rules of the game in policy forums are the criteria by which judgments are made about the legitimacy of participants – their standing as participants in the policy conversation. Disputes within a policy discourse may have to do with the struggle for standing.¹³⁰

The issue of participation and representation becomes an important one in discourse analysis because the interplay between political actors and institutional settings often delineates the boundaries of the policy debate and contributes to the development of a dominant policy discourse.

Bringing non-expert knowledge into the equation: concluding remarks

Much of the literature on the interaction between ideas and institutions focuses on the influence exerted by professional or scientific knowledge on policy outcomes. While the policy-community approach does recognise the presence of interests groups and social movement organisations in the policy process, they are not usually regarded as important contributors to policy-relevant knowledge. Moreover, much of the neo-institutional literature links ideational innovation with the presence of experts and

¹²⁸ Ibid., 47.

¹²⁹ Martin Rein and Donald Schon, "Reframing Policy Discourse", in Frank Fischer and John Forrester, eds, *The Argumentative Turn in Policy Analysis and Planning* (London: Duke University Press, 1993).

expertise in key institutional settings. For example, research on economic policy in the last decade focuses on how changes to the cognitive maps of economists led to market-driven economic policies in the 1980s. While other forms of knowledge in a policy domain are recognised, the literature remains relatively silent regarding how and to what extent non-expert knowledge influences policy debates. While policy issues and debates generate both expert and non-expert forms of knowledge, neo-institutional research focuses its attention predominantly on scientific knowledge as the most important causal variable in the framing of issues. As Singer explains,

The 'cognitive complexity' of an economic policy domain includes the activation of different forms of knowledge (expert knowledge, scientific knowledge, non-scientific knowledge, routines, rules of thumb and so forth) that constitute the understanding of a situation by the actors involved. Policy-relevant knowledge is scientific knowledge only to a certain degree. The knowledge base of economic policy is affected by scientific discourses to a relatively high degree.¹³¹

Singer argues that many times, expert or scientific knowledge makes its way into a policy discourse through formal institutional arrangements, such as policy research institutes or advisory commissions. This allows for greater inter- and intra- agency communication among experts and policy makers. Non-expert knowledge is usually marginalised from these formal channels. Therefore, institutional and organisational factors are regarded primarily as vehicles for the translation of expert knowledge into policy options. While this conclusion may accurately reflect the role of traditional, political and bureaucratic institutions in generating expert knowledge, it does not capture the cognitive dynamics of institutions involved in public consultations and citizen

¹³⁰ Ibid., 156.

engagement. In particular, it does not explain the cognitive activities of non-departmental institutions, like royal commissions, that have the dual mandate of generating both expert knowledge and soliciting the viewpoints of ordinary citizens. The forging of both forms of knowledge in a policy debate is an important yet underdeveloped area of research within the neo-institutional literature.

This research argues that a royal commission, as a policy-making institution, activates expert and non-expert knowledge in a policy debate, and represents different cognitive maps, which compete to define an issue and appropriate solutions. As the previous chapter revealed, policy-formulating royal commissions have established formal and informal arrangements to generate policy-relevant research on a particular issue and provide a forum for the articulation of non-expert or experiential knowledge. The way in which these arrangements are structured and organised determines interactions among key players in a policy domain, and influences the cognitive context of the policy debate.

This dissertation argues that the internal organisational features of the Royal Commission On New Reproductive Technologies very much influenced the type of discourse that emerged on the issue of reproductive technologies. However, the organisational features themselves were influenced by larger institutional and cognitive structures found in the Canadian political systems and in the medical profession. For example, the packaging of reproductive technologies within the broader policy framework of abortion politics also galvanised into action pro-choice organisations working to preserve women's reproductive rights *vis-à-vis* abortion. As a result, the policy debate on reproductive technologies would also be heavily influenced by an

¹³¹ Singer, 1992: 434.

individual rights discourse, a legacy from the abortion debate. The interaction between these macro and micro level institutional factors will provide insights on the decisions and choices taken by the royal commission with respect to reproductive technologies.

Chapter 4 - Challenging the Medical-Scientific Discourse: The Citizens Coalition Against New Reproductive Technologies

Introduction

This chapter outlines the social and political context in which the Royal Commission on New Reproductive Technologies was appointed in 1989, thereby setting the backdrop for the chapters that are to follow. It reveals how reproductive technologies have been regarded as the exclusive domain of medical-scientific experts. Decisions regarding the research agendas of new reproductive technologies and their application have largely been made outside of civil society and outside of policy arenas as well. From *in vitro* fertilisation to embryo research, the development and application of these technologies have been propelled by technological values and the positivist notion of 'scientific progress.' Ultimately, the perspectives of certain segments of civil society have largely been ignored.

This chapter begins with an examination of the dominant role assigned to medical-scientific experts in the research and policy agendas of new reproductive technologies. It examines the institutional structures and processes that have reinforced and maintained the supremacy of experts and expert knowledge in the realm of reproductive technologies. The chapter then explores the responses of religious and feminist groups that emerged in the 1980s in reaction to the expert-driven proliferation of reproductive technologies. One of the most important developments was the establishment in 1984 of FINRRAGE (the Feminist International Network of Resistance to Reproductive and Genetic Engineering) in the Netherlands. The lobbying and mobilisation efforts of the network produced an alternative perspective to the official,

medical-scientific discourse on reproductive technologies. The movement adopted an anti-technology stance that rejected the framing of reproductive technologies as a matter of individual choice and instead focused on the danger they pose to women as a social group. Finally, the chapter examines the mobilisation efforts and agenda of the Canadian Coalition for a Royal Commission on New Reproductive Technologies. The Coalition, which included a wide array of groups, from women's groups to religious organisations, was instrumental in bringing to the forefront the need to include the views of ordinary citizens in the official discourse on reproductive technologies. The chapter assesses the Coalition's agenda and its efforts to forge a public debate on these technologies.

From experimentation to routine practice: popular and medical discourses on reproductive technologies

The term '*new reproductive technologies*' is used to identify a category of biomedical practices and procedures used to assist conception and pregnancy. New reproductive technologies include in-vitro-fertilisation, surrogacy, egg donation, therapeutic donor insemination, and embryo freezing and transfer. As a group, these practices provide alternative means to insemination and fertilisation other than heterosexual intercourse. Individually, these technologies differ significantly in terms of their technological sophistication and level of medical intervention. For example, Assisted Insemination (AI)¹³² entails a lower level of technological sophistication and

¹³² Assisted Insemination (AI) refers to all forms of insemination without intercourse using donor or partner's sperm. The sperm can be placed inside the vagina or in the uterus. The procedure can take place in fertility clinics or can be performed without medical assistance by the parties involved. The latter scenario is usually referred to as Self-Insemination (SI)

medical intervention than does sperm and egg micromanipulation.¹³³ Moreover, these technologies have their own unique history and development. Several of these so-called 'new' technologies, in particular surrogacy and artificial insemination, have been around for a long time. For instance, the earliest recorded artificial insemination of a woman by a physician took place in 1884 in Britain.¹³⁴ However, it was not until the 1978 birth of the first *in vitro* fertilised (IVF)¹³⁵ baby in England that new reproductive technologies began to capture the imagination of both scientists and ordinary citizens alike. The once futuristic, sci-fi tale of 'test-tube' babies became a scientific reality and soon would become a widely accepted treatment for infertility.

Development of IVF and embryo research began in the United States in the 1940s. In 1944, American biologist Miriam Menken and gynaecologist / researcher John Rock at Harvard University performed the first IVF procedure by mixing a viable egg with sperm donated by a medical student. In the late 1960s, drugs to induce ovulation and increase the number of eggs per menstrual cycle were developed and made widely available soon thereafter.¹³⁶ In the 1970s, researchers in several countries successfully developed techniques to retrieve and fertilise an egg outside of the woman's body and transfer the resulting embryo back into the woman's uterus. In 1977, British researchers Patrick Steptoe and Robert Edwards successfully retrieved and fertilised an egg and

¹³³ Farquhar, 1996.

¹³⁴ Margrit Eichler, "New Reproductive Technologies: Their Implications for Women" in Peta Tancred-Sheriff, ed., *Feminist Research: Prospect and Retrospect* (Montreal: McGill-Queen's University Press, 1988).

¹³⁵ In Vitro Fertilization (IVF) is a procedure in which mature eggs are removed from a woman's ovary and fertilized with sperm in the laboratory. After fertilization, the egg is placed in the woman's uterus. The resulting embryos can also be donated to another woman.

transferred it back to the woman's uterus. In July 1978, Louise Brown, the first 'test-tube' baby was born. Embryo research developed concurrently with developments in IVF. Ovulation inducement drugs resulted in the production of more eggs and embryos than were needed for assisted conception. Researchers were able to use the surplus of embryos to conduct scientific research into genetic diseases and causes of infertility.

In the early 1970s, research in infertility treatments, especially in the case of *IVF*, was highly experimental and its application was limited to overcoming infertility due to fallopian-tube obstruction. Moreover, procedures like assisted or self-insemination took place in private settings, usually between doctors and their patients. Sperm donors were usually medical students affiliated with the hospital where the procedure was being performed.¹³⁷ In the years following the 1978 birth of the first 'test-tube' baby, reproductive technologies were being used as a means of overcoming a wide range of infertility problems. In the 1980s, infertility treatments were quickly incorporated into medical practice throughout the Western world and became regarded as routine procedures rather than experimental treatments. As Van Dyck explains, "...15 years after its first successful application, IVF is accepted both as a research discipline, a specialised medical field ('reproductive medicine') and as a common medical procedure."¹³⁸

The transformation of reproductive technologies from experimental research to routine practice has also been accompanied by a growing debate on the definition of infertility. Defining infertility has become a highly contested and political endeavour.

¹³⁶ Royal Commission on New Reproductive Technologies, *Proceed with Care: The Final Report*, 1993.

¹³⁷ Farquhar, 1996.

¹³⁸ Jose Van Dyck, *Manufacturing Babies and Public Consent: Debating the New Reproductive Technologies* (Basingstoke: Macmillan, 1995).

Since the advent of reproductive technologies in the late 1970s, the term 'infertility' has taken on a broader and more complex meaning. Specifically, the medical conception of infertility views it as an illness or disease that can be treated with biomedical treatments.¹³⁹ As an illness, the category 'infertility' subsumes a broad range of biological conditions and clinical criteria for childlessness. The label 'infertile', which had traditionally been used to refer to individuals who were sterile, was now a medical diagnosis for individuals who remain childless after a one-year period of unprotected intercourse. The development and proliferation of reproductive technologies has redefined infertility as a broad diagnostic category for all unexplained incidences of childlessness. Critics argue that the lack of consistency and clarity in delineating the origins of childlessness ultimately works to validate the broad application of reproductive techniques. For instance, the term infertility does not distinguish between infertility cases resulting from environmental factors as opposed to innate, biological conditions. As Steinburg explains,

...environmentally induced and iatrogenic 'infertility' clearly constitute (often preventable) problems which do not originate in the individual affected. However, when infertility is strictly a diagnostic/treatment question, the power relations surrounding the relationship between infertility, environmental pollution and adverse effects of medical treatment become begged.¹⁴⁰

¹³⁹ Janice Raymond, *Women as Wombs: Reproductive Technologies and the Battle Over Women's Freedom* (New York: HarperCollins Publishers, 1993). Raymond analyzes the production of infertility and fertility in developed and developing countries, and concludes that "...the ways in which both [fertility and infertility] are created and commodified as medical problems, is very much linked with the production of distinctively different parts of the world" (Raymond, 1993:2)

¹⁴⁰ Deborah Lynn Steinberg, *Bodies in Glass: Genetics, Eugenics, Embryo Ethics* (Manchester: Manchester University Press, 1997): 44.

The current definition of infertility put forward by the biomedical community is the absence of conception after one year of unprotected intercourse. The World Health Organisation has defined infertility as a minimum of two years of sexual intercourse without pregnancy while other public institutions have used a four-year benchmark for diagnosing infertility.¹⁴¹ This lack of consensus has affected the validity of statistical information on the rate of infertility. Not surprisingly, statistical evidence on the rate of infertility varies according to which definition of infertility is being used.

After the birth of Louise Brown in 1978, news stories on reproductive technologies in popular news magazines regularly spoke of an infertility epidemic. One famous report from *Time Magazine* cited that one in six couples in the United States were infertile due to sexually transmitted diseases and to women delaying childbearing. The infertility rate was said to have increased by 177% between 1965 and 1982.¹⁴² The data used to substantiate these claims came from a 1984 report by the National Centre for Health Statistics. However, as Van Dyck explains, this statistical evidence was heavily influenced by the one-year benchmark definition of infertility used by the biomedical profession. Moreover, the data did not distinguish between couples that were childless by choice versus those that desired to have children.

Subsequent research articles published in American and British journals disputed the myth of an infertility epidemic, and argued that evidence purporting a sharp increase in the rate of infertility was based on arbitrary data collected by IVF clinics using different methods for diagnosing and categorising patients. By 1987, scientific research

¹⁴¹ Varda Burstyn, "Breeding Discontent" in Gwynne Basen, Margrit Eichler, and Abby Lippman, eds, *Misconceptions: The Social Construction of Choice and the New Reproductive and Genetic Technologies* (Hull: Voyageur Publishing, 1993).

was reporting that the rate of infertility had remained steady since the mid-1980s, with one out of twelve couples identified as being infertile. However, during the same period, the number of couples seeking reproductive treatments for their infertility problems increased threefold.¹⁴³ These findings, while successfully refuting the alarming accounts of an 'infertility plague', were largely ignored by mainstream news accounts on reproductive technologies.

The media played a significant role in the naturalisation process of reproductive technologies. At the same time reproductive technologies were being transformed into routine medical practices, they were also being depicted as revolutionary procedures in the popular media. Through their depiction in mainstream movies, television dramas, and science-fiction novels, scientific and media images of reproductive treatments became part of the public's consciousness. Van Dyck contends that the positive depiction of reproductive treatments as both routine and revolutionary practices in scholarly scientific articles and news reports contributed to the general public's approval of reproductive treatments and the medico-scientific community that emerged from them.¹⁴⁴ Indeed, the Royal Commission commissioned a public opinion survey to gauge societal attitudes and values regarding reproductive technologies. The survey found that the majority of Canadians (approximately 70%) were in favour of most reproductive technologies, including assisted insemination and *in vitro* fertilisation as long as

¹⁴² Raymond, 1993: Van Dyck, 1996.

¹⁴³ Van Dyck, 1996.

¹⁴⁴ Ibid.

government ensured their safety and that access was restricted to couples in a long-term, heterosexual relationship.¹⁴⁵

According to Raymond and Van Dyck, these cultural and media representations of reproductive technologies, for the most part, upheld the notions of scientific and technological progress and the promise of technological discoveries.¹⁴⁶ News captions of 'miracle babies' and of a 'reproductive revolution' romanticised technological and scientific research and depicted biomedical practitioners as both the guardians and transformers of human life. As Raymond explains, "Reproductive and genetic engineering news is often covered as a series of dramatic events with the stress on technological miracle, magic, and mystique. Today, reproductive and genetic engineering has become a national symbol of progress, comparable to the space program of the 1960s and '70s".¹⁴⁷

The romantic depiction of reproductive technologies in popular culture has largely obscured the technological disasters and scientific mishaps that have occurred throughout history.¹⁴⁸ Farquhar argues that the negative aspects of fertility treatments are often excluded from the popular discourse on reproductive technologies. Her analysis of the print media's depiction of these technologies reveals that articles tend to relate accounts of the treatments offering hope and delivering 'miracle babies' to desperate infertile

¹⁴⁵ Decima Research, *Social Values and Attitudes of Canadians Toward New reproductive Technologies*. Research Study of the Royal Commission on New Reproductive Technologies, 1993.

¹⁴⁶ Raymond, 1993.

¹⁴⁷ Ibid., 110.

¹⁴⁸ The crippling effects of Thalidomide on a generation of babies during the 1950s and '60s; the development and marketing of harmful contraceptives, such as the Dalkon Shield and Norplant in both developed and developing countries; and the side-effects of silicone breast implants are but a few examples of scientific research 'gone bad'.

couples while rendering invisible the health risks and pain they pose to women undergoing treatments. Moreover, media accounts of these technologies often focus on success stories despite the relatively low success rates of treatments, like IVF. “Their adventure narratives relate the positive resolution of a minority of these cases. Accordingly, they narrate high-interest stories of the “desperate infertile couple’s” use of reproductive technologies – regardless of cost, discomfort, stress, and health risks – and their triumph over infertility and “success” in having their much wanted “miracle baby”.¹⁴⁹

The medical-scientific model regards reproductive technologies as neutral, and necessary, and transforms the patient into a client. Medical journals and media accounts regularly depict infertility treatments as services that are in great demand. As Van Dyck notes, ‘reproductive medicine has become a ‘service industry’, offering for purchase a wide range of techniques, options, products and expertise.’¹⁵⁰ Pharmaceutical and biomedical companies have seen their profits increase dramatically. For example, Ares-Serono Inc, a manufacturer of fertility drugs, has seen its profits increase from \$7.2 million in 1982 to \$35 million, in 1986. In this context, money often determines who has access to reproductive treatments and who does not. As Pfeffer and Woollett note, ‘...money has become synonymous with involuntary childlessness to the extent that lack

¹⁴⁹Farquhar, 1996. Her analysis of the popular discourse on reproductive technologies focuses on accounts in mainstream magazines, including *The National Enquirer*, *People Magazine*, *Woman’s World*, *New York Times*, *Newsweek*. Farquhar does find accounts of reproductive technologies in the print media that are less than favourable and that examine the ethical dilemmas they raise. However, she argues that these critical accounts are fewer in number and tend to focus on sensational stories, including the sale of eggs and embryos, mishaps in the treatments, and menopausal women having children.

¹⁵⁰Van Dyck, 1995: 12. In Canada, four out of seventeen IVF clinics and four out of fifteen sperm banks operate on a for-profit basis (RCNRT’s Final Report, 1993)

of it has been incorporated into the aetiology of infertility.”¹⁵¹ This is especially the case in countries, like the US, Canada, and Britain, where reproductive technologies are not covered by state-sponsored medical insurance.¹⁵² Under these systems, individuals seeking infertility techniques are not only regarded as patients in need of medical treatment, but as clients or consumers of a badly needed commodity. More often than not, these ‘consumers’ tend to be white, middle or upper class couples who can afford the expensive treatments.¹⁵³ Economically disadvantaged groups are essentially excluded from accessing these treatments due to financial reasons.

Some critics of reproductive technologies argue that the routinisation of reproductive technologies, especially IVF, has largely been market-driven. IVF is a very expensive treatment, which involves a number of interlocking institutions and professional groups, including scientists, technicians, private and public funding laboratories and clinics, geneticists, obstetricians, nurses, etc. Despite its low success rate, IVF is marketed as a viable infertility treatment for couples that have not been able to conceive within a year. While the profit motive is quite explicit in countries where the health care system is privatised, publicly funded health care systems are not immune to the drive for profit. In Canada, for example, ‘fee-for-service’ medicine provides an incentive for physicians to recommend and use the more invasive, and usually the more expensive procedures available to them. By using IVF, physicians can charge higher

¹⁵¹ Naomi Pheffer and Ann Woollett, *The Experience of Infertility* (London. Virago, 1983).

¹⁵² During the Commission’s deliberations, Ontario was the only province that funded fertility treatments. Today, no Canadian province funds fertility treatments, including IVF and AI, through its Medicare system.

¹⁵³ Farquhar, 1996; RCNRTs, *Proceed with Care: Final Report*, 1993.

fees, and therefore earn a higher income. A physician on salary would not have the same incentive to use the more expensive treatment option.

According to several feminist researchers, the incorporation of reproductive treatments as routine procedures in medical practice as well as the redefinition of infertility is part and parcel of a medicalised culture.¹⁵⁴ Both the medical-scientific, and popular discourses on reproductive technologies have worked to characterise infertility treatments as simultaneously both routine practices and revolutionary developments. Public acceptance of this characterisation is very much linked to the cognitive authority of medicine in our society. However, the authoritative knowledge of medical experts is also maintained and reproduced by professional associations and committee systems that make decisions in the area of research and funding priorities. The next section examines the institutional factors that contribute to the privileged status of medical authority in the area of reproductive technologies.

Self-regulation, research committees, and medical-scientific authority in reproductive technologies

The privileged position of medical -scientific experts in the policy debate on reproductive technologies is institutionalised in Canada through the committee system of review in scientific and medical research. In most countries, medical research is monitored by professional committees located in hospitals or universities. These committees are responsible for reviewing research proposals, establishing professional standards, and ensuring principles of research ethics are upheld. Generally, the majority

¹⁵⁴ Kathryn Pauly Morgan, "Contested Bodies, Contested Knowledges: Women, Health, and the Politics of Medicalization" in Susan Sherwin, ed., *The Politics of Women's Health: Exploring Agency and Autonomy* (Philadelphia: Temple University Press, 1998).

of committee members are experts familiar with the research areas in question. They have the institutional and professional authority to make decisions on the funding of research projects and on the development of ethical standards for experimentation on humans. The system of committee review is essentially a form of self-regulation of researchers and their practices, and with some minimum requirement for public input or accountability. Decisions on scientific research are therefore left to the discretion of scientific experts and specialists.

In Canada, the Medical Research Council of Canada is responsible for developing ethical standards and guidelines for scientific research. It oversees a committee system of research review conducted by local research ethics boards (REBs).¹⁵⁵ The Council's 1987 *Guidelines on Research Involving Human Subjects* outlined a number of recommendations regarding the make-up of committee members, the independent monitoring of research and the principles of consensual research.¹⁵⁶ With regards to membership of REBs, the Council recommended that members reflect community values and represent a relevant medical or scientific discipline. The Council also recommended the inclusion of lay persons as well as experts from other disciplines such as ethicists, theologians, and lawyers unaffiliated with the university or hospital boards. The Guidelines, however, did not stipulate the number of lay persons to be included in a

¹⁵⁵In 1989, the MRC along with the Social Science and Humanities Research Council (SSHRC) and the National Council on Ethics in Human Research (NCEHR) announced a Tri-Council Policy Statement for Ethical Conduct in Research Involving Humans.

¹⁵⁶Medical Research Council of Canada., *Guidelines on Research Involving Human Subjects* (Ottawa, Supply and Services Canada, 1987).

REB's membership. This was a clear departure from the Council's 1978 guidelines which suggested that lay persons make-up the majority of REBs membership.¹⁵⁷

In 1989, a survey of REBs conducted by the National Council on Bioethics in Human Research revealed that 75% of committees included community members. However many of these lay persons had some affiliation with the research or funding institution and therefore were not considered independent. The survey also found that while experts from non-scientific backgrounds were present on ethics boards, the majority of committee members had scientific or medical backgrounds.¹⁵⁸ This composition of committee memberships suggests that medical and scientific authority was assigned a privileged status in matters involving human research. Medical and scientific authority also seems to have won out against the MRC's provisions for the independent monitoring of research.¹⁵⁹ These provisions, which would require researchers to pay an independent agency to monitor their research, were said to be the most rigorous provisions internationally. Despite these provisions, the majority of research ethics boards in Canada did not adopt any independent mechanisms for monitoring research. In most committees, the monitoring of research only entailed the submission of annual reports by researchers to ethics boards.

¹⁵⁷ Medical Research Council (Canada), *Ethical considerations in research involving human subjects* (Ottawa, Supply and Services Canada. 1978).

¹⁵⁸ National Council on Bioethics in Human Research. *Protecting and Promoting the Human Research subject: A Review of the Function of Research Ethics Boards in Canadian Faculties of Medicine* (Ottawa, 1995). The study found that lawyers were on 28% of committees; philosophers, bio ethicists or theologians were on 36% of committees; mental health experts were on 55%; and nurses were present on 60% of committees.

¹⁵⁹ MRC, 1987.

The MRC's guidelines for ethical research left intact the local decision-making authority of research ethics boards. For example, the MRC established voluntary guidelines on embryo research, allowing experimentation for non-therapeutic purposes on 14-17 days old embryos. The Guidelines also recommended that research on embryos be permitted only to advance knowledge on the causes and treatment of infertility, and that embryos not be created solely for research purposes.¹⁶⁰ Aside from these broad guidelines, research ethics boards were free to determine how embryos were handled and stored and what kind of procedures to follow to obtain a donor's informed consent.¹⁶¹ The lack of national standards or monitoring of embryo research meant that decisions in the area of research were being done outside of a public policy. The public had little information regarding what kind of research was being conducted in this area. The lack of national standards and national approval of embryo research would be an important issue for the RCNRTs.

Apart from the committee system of review, the cognitive and institutional authority of medicine and science is further reinforced by contemporary medical ethics. The issue of paternalism in medicine and problems related to the patient-doctor relationship dominate discussions in the field of medical ethics. The deliberations and decisions made by local research ethics boards emphasise case-by-case analysis of medical and scientific practices, including obtaining consent, preserving confidentiality, truth-telling, allocation of resources, issues related to terminal illnesses, and

¹⁶⁰ MRC, 1987.

¹⁶¹ RCNRTs, 1993.

reproduction.¹⁶² By focusing on specific problem cases of doctor-patient, researcher-subject interactions, contemporary medical ethics maintains and legitimises the institution of medicine, along with its general structures and patterns.¹⁶³ In the area of reproductive technologies, medical ethics continues to use the case-by-case approach to evaluate the techniques, predominantly focusing on the particular applications of them. Ultimately, discussions in medical ethics on the issue of reproductive technologies avoid any analysis of the broader societal implications of greater medical intervention in reproduction. As Sherwin explains,

They recognise the need for informed consent (though they seem willing to accept remarkably low standards for consent here) and the need to protect confidentiality, etc., but by and large most authors in medical ethics deny that there are any new or unique problems posed by the new reproductive technologies.¹⁶⁴

The lack of universal standards in medical research and the case-by-case approach to ethical review leaves a great deal of room for personal and subjective biases to influence decisions on reproductive technologies. For example, physicians determine who has access to reproductive treatments, like *in vitro* fertilisation and assisted insemination. Couples that conform to the traditional, heterosexual family unit are considered appropriate candidates for these procedures. In contrast, single males or females, as well as lesbian or gay couples are usually denied access because they are

¹⁶² Susan Sherwin, "Feminist and Medical Ethics: Two Different Approaches to Contextual Ethics," in Helen Holmes and Laura Purdy, eds, *Feminist Perspectives in Medical Ethics* (Indianapolis: Indiana University Press, 1992).

¹⁶³ According to Sherwin, feminist medical ethics recognizes that medicine and by extension reproductive technologies are products of social patterns and values and "contribute to social attitudes that further undermine the social position of women and children in society" (Sherwin, 1993:25).

¹⁶⁴ Sherwin, 1992: 24.

considered unfit parents. Discrimination against individuals or couples because of their marital status or sexual orientation is said to be a common practice at individual fertility clinics despite the existence of equality provisions in the Canadian Charter of Rights and Freedoms.¹⁶⁵

The lack of enforceable, universal guidelines or regulations in the area of reproductive technologies allows fertility clinics and practitioners to use a biased and potentially illegal criterion to determine the ability of an individual or couple to parent a child. However, as the following discussion reveals, the hegemony of medical authority in the area of reproductive technologies did not go unchallenged. Religious and feminist groups became increasingly concerned with the social and moral implications of reproductive technologies. Governments, on the other hand, focused their attention on the legal implications of reproductive treatments, such as ownership rights, and the legal status of children and parents, as well as the appropriate approach to manage or regulate these new reproductive arrangements. In most countries, public inquiries became popular tools for governments to tackle the legal issues posed by reproductive technologies. The next section examines some of these inquiries and their influence on the official discourse on reproductive technologies.

Public inquiries on reproductive technologies: international and Canadian perspectives

As the preceding discussion reveals, the issue of reproductive technologies, both in Canada and elsewhere, has traditionally been dominated by scientific and legal discourses. While the late 1980s witnessed an influx of public inquiries and government

¹⁶⁵ RCNRTs, 1993.

panels on reproductive technologies, most of these inquiries were composed predominantly of medical and legal experts, and a handful of ethicists and social workers. Decisions regarding the ethical and social dimensions of these technologies were, again, left up to the judgment of the medical profession. Moreover, the majority of government reports on new reproductive technologies fully embraced the medical definition of reproduction as a biological-medical process rather than a social process.¹⁶⁶ One such report was produced by the most notable public inquiries on reproductive technologies, Britain's Warnock Committee¹⁶⁷. The 1982 Warnock Committee was appointed by the British government in response to the 1978 birth of the first IVF baby, Louise Brown. Its members comprised a small cross-section of professional experts representing law, medicine, social work, theology and ethics.¹⁶⁸

The Warnock Report, which was published in 1984, outlined recommendations that reinforced the privileged status of medical-scientific knowledge in the official discourse on reproductive technologies. The terms of reference and definitions that were used in the Committee's deliberations were medical-scientific as were the categories or facts used to resolve the highly contentious issue of embryo research. For example, the Committee incorporated the newly created scientific category of 'pre-embryo' (0-14 days gestation), in order to both validate and permit embryo research, and appease growing public opposition to this kind of research.¹⁶⁹ Moreover, the Committee relegated

¹⁶⁶ Patricia Spallone, *Made to Order: The Myth of Reproductive and Genetic Progress* (Oxford: Pergamon, 1987).

¹⁶⁷ The Committee is formally known as the Committee of Inquiry into Human Embryology.

¹⁶⁸ Steinburg, 1997.

¹⁶⁹ Ibid.

decisions about the 'best interests' of babies, women and families to the judgment of the medical profession¹⁷⁰

Other inquiries also validated the medical-scientific representation of reproductive technologies. Australia's 1983 Waller Report¹⁷¹ and the Danish Council of Ethics 1990 Report, titled '*The Protection of Human Genes, Fertilised Ova, Embryos and Foetuses*' both used medical-scientific language and definitions in their defence of conceptive treatments. The Danish report adopted a quite favourable stance on reproductive technologies, arguing that they represent "an essential improvement in the existing treatment of childlessness."¹⁷² Moreover, the report, while recognising the social and moral implications of reproductive treatments, argued that government policy should show compassion for the plight of infertile couples.

While many international inquiries were government-appointed bodies, a good number of non-government reports on reproductive technologies were also produced during this time, especially in the United States. The American Fertility Society, an organisation representing physicians and scientists in the biomedical field, produced one of the most notable committee reports. The Ethics Committee was made up of eleven members, seven of whom were scientists and two of whom were lawyers widely known to be proponents of reproductive technologies.¹⁷³ Not surprisingly, the overriding premise of the Report was the benefits derived from the technologies and the need to

¹⁷⁰ The Warnock Committee, *Report of the Committee of Inquiry into Human Fertilisation and Embryology* (Great Britain. Parliament. House of Commons. London, HMSO. 1984)

¹⁷¹ The Waller Committee is formally known as the Committee to Consider the Social, Ethical, and Legal Issues Arising from In Vitro Fertilization.

¹⁷² *Danish Council Of Ethics Report*, 1990.

¹⁷³ Raymond, 1993.

curtail regulations that would undermine a user's freedom of choice. "Professional guidelines must not casually accede to restrictions on reproductive technologies that offer enhanced options. Rather, as this report attempts to do, guidelines should be set out that detail how the technologies may be offered with safety and ethical appropriateness..."¹⁷⁴ While the report did recognise religious objections against reproductive treatments, it ignored other social and feminist concerns in its deliberations. The recommendations of the report were covered by the American media, which praised the Committee's work as an 'impartial' analysis of the challenging issues surrounding reproductive technologies. The fact that the majority of the committee's members were in-house experts of the American Fertility Society was not mentioned in the media coverage.¹⁷⁵

In Canada, most governmental inquiries examined reproductive technologies in terms of their ethical-legal implications. Given that health care is a provincial responsibility, several provincial governments, including Ontario, Saskatchewan, British Columbia and Quebec, appointed inquiries to examine the issue of reproductive technologies. Many of the inquiries were established by law organisations, including the Law Reform Commission of Canada, the Ontario Law Reform Commission, and the Law Reform Commission of Saskatchewan. Other inquiries were established - by both Health and Welfare Canada, and medical associations - including the Medical Research Council of Canada. Reports, such as the *Ninth Report of the British Columbia Royal Commission on Families and Children's Law* and the *Ontario Report of Human Artificial Reproduction and Related Matters* did not challenge the medical-scientific discourse on reproductive technologies. The majority of issues examined included the rights of the

¹⁷⁴ The American Fertility Society's Report, 1986 as quoted in Raymond, 1993: 127.

interested parties, such as informed consent, protection of the child's best interests, and parental status. To a large extent, these commissions represented the legal appropriation and validation of medical definitions of reproductive technologies. For example, infertility was commonly defined as a medical condition best treated by fertility treatments. The recommendations of the Ontario Law Reform Commissions also reinforced medical-scientific control of reproductive technologies with its emphasis on the importance of viewing artificial insemination as a medical procedure requiring the supervision and control of physicians. This delegitimised non-medical, self-insemination as an alternative means of conception. The roster demographics of Canadian inquiries also suggests the importance of medical and scientific expertise to the field of reproductive technologies. To a large extent, legal and medical experts dominated official deliberations on reproductive technologies. Segments of civil society, especially women, were largely excluded from the professional deliberations on these technologies.¹⁷⁶ After examining the organisation of these commissions, Eichler concludes, "...to the degree that one can judge from names, these committees tend to be overwhelmingly, or even exclusively, staffed by men. Women, who are the child bearers, have so far been largely excluded from the official discourse which is taking place in this area."¹⁷⁷

While inquiries during the 1980s and early 1990s endorsed the notion of 'scientific' progress and validated the dominance of the medical profession in the discourse on reproductive technologies, they also reflected certain societal and

¹⁷⁵ Van Dyck, 1996.

¹⁷⁶ Margrit Eichler, "New Reproductive Technologies" in Peta Tancred-Sheriff, ed., *Feminist Research* (Montreal: McGill-Queen's University Press, 1988): 14.

professional biases in their recommendations. For example, many of the inquiries recommended that access to reproductive technologies be restricted to heterosexual couples, especially married couples. Single and lesbian women were denied access to the treatments because they were regarded as less suitable parents.¹⁷⁸ Moreover, married women were restricted from using reproductive treatments if they did not have their husband's consent. The importance of male consent and the legitimacy of the children born from *in vitro* fertilisation and artificial insemination were recurring themes in the majority of the Canadian and international inquiries. For example, the Ontario Law Reform Commission Report recommended that the male partner's consent be obtained in order to avert any questions regarding the fidelity of the woman and the 'legitimacy' of the child. Moreover, no standards were put in place for screening potential clients or patients of reproductive technologies. For the most part, the inquiries left decisions regarding admittance to IVF clinics and sperms banks to the sole discretion of the attending physician. Ultimately, the inquiries upheld the notion of the traditional, two-parent, heterosexual family and reinforced the importance of ensuring a child's legal and legitimate status through male consent.

Challenging the medical-scientific model: religious and feminist critiques of reproductive technologies

The proliferation of unregulated fertility clinics and the entrenchment of medical authority in the area of reproductive technologies during the 1970s and 1980s did not go unchallenged. Many groups representing different segments of civil society voiced their concerns regarding the lack of attention assigned to the social and moral implications of

¹⁷⁷ Ibid.

reproductive technologies. Religious groups were the earliest critics of reproductive technologies, arguing that scientific interventions in human reproduction transgressed natural law and threatened the heterosexual, two-parent, nuclear family. Religious organisations and their leaders publicly called for a ban on all forms of reproductive technologies, from assisted insemination and *in vitro* fertilisation, to surrogacy and embryo research.¹⁷⁹

In the mid to late 1980s, feminist organisations and academics forged a debate on the ramifications of reproductive treatments on the health and well being of women.¹⁸⁰ Two distinct feminist positions on these technologies emerged during this time. One feminist position appealed to a social justice perspective that regarded reproductive treatments as detrimental to women as a social group. The other feminist position was couched in the language of rights and emphasised reproductive choice and equal access to reproductive treatments. The ‘social justice’ feminist position was embedded in a broader critique of scientific objectivity and technological progress while the liberal position put forward arguments in favour of ‘choice’ and ‘equality’. The following pages examine the challenges posed by religious and feminist groups to medical-scientific authority in the area of reproductive technologies.

The sanctity of life and family: religious and conservative reactions to reproductive technologies

Since the birth of the first ‘test tube’ baby in 1978, religious groups and other conservative organisations actively spoke out against the development and application of

¹⁷⁸ Warnock Report, 1984; The Ontario Law Reform Commission Report, 1985.

¹⁷⁹ Farquhar, 1996.

reproductive technologies. Opposition from family groups, 'pro-life' organisations and religious institutions¹⁸¹ centred on a number of key principles and values, specifically the protection of the family as the only healthy environment for child rearing, and the sanctity of human life from the moment of conception.¹⁸² The theory of natural law informs conservative positions against reproductive technologies. The natural law tradition regards anything that interferes with the natural order of family life and procreation as morally wrong. According to this theory, "...morality is based on the natural order of things, and ... moral goodness does not consist in transcending or escaping the natural order, but in its perfection."¹⁸³ By extension, therefore, reproductive technologies interfere with the laws of nature, which derive from a supreme being.

The Catholic Church's critical stance on reproductive technologies was articulated in its 1968 encyclical '*Humane Vitae*'. Two principles inform the Church's position on reproductive technologies - justice and chastity. The principle of justice is applied to procedures like *in vitro* fertilisation, which involves the production and subsequent destruction of 'surplus' embryos. These procedures are regarded as immoral because they entail the displacement of God from his role as the giver of life and death, by humans.¹⁸⁴ The principle of chastity refers to the Church's belief that sex is inseparable from marriage and reproduction. The primary purpose of sex is procreation.

¹⁸⁰ Stanworth, 1987; Arditti et al., *Test-Tube Women: What Future for Motherhood?* (London: Pandora Press, 1984).

¹⁸¹ This network of groups include the Catholic Church, United Church of Canada, Presbyterian Church in Canada, Right to Life Association, and REAL Women.

¹⁸² See Nancy Lublin, *Pandora's Box; Feminism Confronts Reproductive Technology* (Lanham: Rowman & Littlefield Publishers, 1998); Will Kymlicka, *Approaches to the Ethical Issues Related by the Commission's Mandate*. RCNRT's Research Studies, 1991.

¹⁸³ Kymlicka, 1991: 8.

¹⁸⁴ Lublin, 1998.

Therefore, any attempt at conception that occurs outside the marital bond is deemed sinful. As Lublin explains,

The 'marital act' has an inseparable connection of unitive and procreative significance. From this physical union, husband and wife are meant both to experience closeness and to generate new life. Therefore, sexual relations that are not procreative and / or do not involve conjugal love are sinful¹⁸⁵

The Church's doctrine of chastity ultimately reaffirms the supremacy of the traditional, heterosexual family as the only appropriate environment to raise a child.

This belief informs the positions of other conservative, 'pro-family' groups that view reproductive technologies as a threat to existing social relations and established identities of 'natural' parenthood. The practice of surrogacy and egg and sperm donation upset conventional understandings of biological and social family ties. Conservative critics argued that this confusion would have a detrimental effect on children resulting from these new reproductive arrangements. A particular concern shared by these conservative groups was the potential for reproductive technologies to expand the definition and practice of family life to include single women and lesbian and gay couples. These new reproductive practices would therefore threaten the sanctity of the traditional family unit.

Another group vocal in their moral opposition to reproductive technologies is anti-abortion organisations. During the 1980s, a debate and struggle over reproductive freedom emerged in the United States as 'pro-life' groups actively lobbied for the constitutional recognition and protection of foetal personhood. While the debate primarily focused on the issue of abortion, the issue of 'orphaned' embryos, that is

embryos that are produced and subsequently abandoned by a couple undergoing *in vitro* fertilisation, was also raised. Anti-abortion groups took issue with the common practice of disposing unwanted or unclaimed embryos, and argued that embryos are life forms deserving of constitutional protection. A legal debate would subsequently ensue regarding the ownership and disposal of unclaimed embryos. As Hartouni explains, the debate raised a number of difficult questions on the issue of surplus embryos, including,

Whose property were they? What was their status? the nature of their relationship to each other and their 'genetic sponsors'? the extent of their claims? Should they be thawed and flushed? used for experimentation? or 'put up for adoption?'¹⁸⁶

Increasingly, the legal status of the embryo and of embryo research dominated debates on *in vitro* fertilisation in several countries. Religious and anti-abortion groups actively lobbied governments to ban *in vitro* fertilisation and embryo experimentation. However, legislation in most countries protected the needs and interests of scientific research. In Britain, the Warnock Report set out to negotiate between the needs of the scientific community and the moral concerns of religious groups with regards to embryo experimentation. In order to appease the anti-abortionists and allow embryo research to continue, the Committee validated a new phase of embryo-development, which would make it permissible to conduct embryo experimentation. Through scientific language and research findings, the newly termed 'pre-embryo' phase¹⁸⁷ (0-14 days gestation) was used

¹⁸⁵ Lublin, 1998: 5.

¹⁸⁶ Valerie Hartouni, *Cultural Conceptions: On Reproductive Technologies and the Remaking of Life* (Minneapolis, University of Minnesota Press, 1997): 28.

¹⁸⁷ The pre-embryo phase refers to the period of gestational development when the embryo has not yet implanted itself in the woman's uterus.

to demarcate some embryos as research material as opposed to human life forms.¹⁸⁸

Moreover, it corresponded to the legal distinction between preventing contraception, that is preventing the implantation of the embryo in the uterus, and abortion, the extraction of an embryo that has undergone implantation. Other countries, Canada included, adopted the notion of a 'pre-embryo phase' in their legislation on embryo research. The Medical Research Council of Canada's 1987 *Guidelines on Research Involving Human Subjects* adopted this term to validate and permit research on embryos. While the Council's Standing Committee on Ethics in Experimentation acknowledged that the distinction between embryos based on gestational development is an artificial one, it nonetheless adopted the 14-17 day cut off point for embryo research in its ethical guidelines. Moreover, it reaffirmed local research ethics boards as the governing body for decisions on embryo experimentation and other related practices. "Decisions on the details of research proposals involving embryos will vary with regional and individual differences, and thus the local REB is an appropriate forum in which to assess each protocol"¹⁸⁹

Religious and moral reactions to reproductive technologies greatly challenged the notion of scientific progress and the so-called 'miraculous' outcomes of reproductive technologies. They raised a number of concerns regarding the impact of reproductive technologies on existing social relations and identities. The protection of the traditional nuclear family and the embryo, and the welfare of children born from these technologies were and continue to be central themes of the religious discourse on reproductive technologies. Many of these issues were taken up by several public inquiries whose membership would include representatives from religious communities. By the mid-to-

¹⁸⁸Steinburg, 1997.

late 1980s, religious and conservative groups were joined by feminist groups and academics in challenging the 'neutrality' of reproductive technologies. However, while religious opposition to reproductive technologies was based on a conservative agenda to safeguard 'traditional' values, the positions taken by women's organisations centred on the feminist project(s) of female emancipation and equality.

The following pages examine the feminist discourses that influenced the public debate on reproductive technologies in the late 1980s and early 1990s. Specifically, I explore two contending feminist positions on reproductive technologies, the social justice position, which regards reproductive treatments as inherently oppressive to women; and the 'reproductive rights' position, which emphasises choice and equal access to reproductive technologies.

Feminist challenges to reproductive technologies

In the 1980s, social movement organisations and activists at both international and national levels challenged the medical-scientific discourse on reproductive technologies. This period also witnessed a plethora of feminist research and analysis on the implications of reproductive techniques for women as a social group. In 1984, feminist organisations and academics from both developing and developed countries met at the Second International Interdisciplinary Congress on Women in Groningen, Netherlands.¹⁸⁹ At the top of the agenda was the development of a woman-centred perspective on the rapidity of technological developments in reproductive medicine. The Feminist International Network of Resistance to Reproductive and Genetic Engineering

¹⁸⁹ MRC, 1987: 34.

¹⁹⁰ Lublin, 1998.

(FINRRAGE) was born out of the Groningen conference. The organisation would subsequently organise conferences in Canada, Australia, Brussels, Austria, and Bangladesh. Many activists and women's groups in Canada, including the National Action Committee on the Status of Women, took part in the network's activities.

The ideological and political position of FINRRAGE was strongly influenced by the ideas found in Gena Corea's *Mother Machine* and Arditti's *Test-Tube Women*.¹⁹¹ This feminist work provided a sharp criticism of past feminist research that espouses the potential of reproductive technologies to liberate women from the biological burden of motherhood.¹⁹² Its hostile views towards surrogacy and *in vitro* fertilisation were embedded in a broader critique of modernity and scientific rationality. Researchers like Corea and Arditti argued that in a patriarchal society, gender inequality is institutionalised and perpetuated by existing social arrangements and activities, including scientific and technological research. Reproductive technologies are regarded as products of a patriarchal and capitalist system that have the potential to develop into a full-fledged technological domination of the powerful over the most vulnerable segments of society.¹⁹³ The driving force behind these technologies was the capitalist interests of biomedical scientists and pharmaceutical companies. Moreover, the majority of these

¹⁹¹ Gena Corea, *The Mother Machine: Reproductive Technologies from Artificial Insemination to Artificial Wombs* (New York: Harper and Row, 1985); Arditti, et al., 1984.

¹⁹² Shulamith Firestone's *The Dialectic of Sex* (1970) argued that women's oppression could end by eliminating women's biological ties to reproduction via reproductive technologies. More recently, Donna Haraway's *Simians, Cyborgs and Women* (1991) predicts the human evolution of cyborgs, characterized as half-human, half-machine individuals that are asexual and therefore unencumbered by the problematic reproductive dualism of masculine-feminism.

¹⁹³ Huxley's *Brave New World* and Margret Atwood's *A Handmaid's Tale* are often referred to in FINRRAGE's anti-reproductive technologies stance.

technologies and drugs were said to directly target women. Ultimately, FINRRAGE advanced an anti-science discourse that viewed reproductive technologies as expanding the opportunities for women's exploitation and oppression. FINRRAGE not only challenged the medical-scientific representation of reproductive technologies but it contested the notions of scientific reason and objectivity. As Stanworth explains:

Armed with two substantial bodies of feminist critique - one documenting the indifference and even misogyny, that animates scientific, obstetric and gynaecological practice towards women, and the other offering a philosophical re-examination of the masculinist nature of what passes for scientific objectivity and rationality - feminists have increasingly seen in the new reproductive technologies nothing less than an attempt to appropriate the reproductive capacities which have been, in the past, women's unique source of power.¹⁹⁴

While FINRRAGE's membership represents a diversity of views, the organisation's official stance was to stop the proliferation and use of infertility treatments, including *in vitro* fertilisation, assisted insemination, and surrogacy. It lobbied governments to ban these technologies, citing their low success rates and the potential harm they pose to women's health and well - being. FINRRAGE's lobbying and mobilisation efforts took several forms, including hosting international and national conferences, publishing articles and books on the matter, and creating an international network of women's groups from different countries. Today, FINRRAGE operates in over 35 countries and works towards increasing public awareness on the social impact of reproductive treatments on women, and on society as a whole. In certain instances, its mobilisation efforts and research did influence national policy. For example, the

¹⁹⁴ Michelle Stanworth, *Reproductive Technologies: Gender, Motherhood and Medicine* (Minneapolis: University of Minnesota Press, 1987): 3.

Australian chapter of FINRRAGE was a key player behind that country's ban on surrogacy arrangements.

The mobilisation and research efforts of FINRRAGE were instrumental in forging an alternative perspective on infertility treatments that had previously been excluded from official discourses of reproductive technologies. The organisation challenged the professional authority of medical-scientific experts in the area of reproductive technologies. This feminist position propelled many national women's groups to organise in an effort to influence their government's policy on these technologies. It also underscored the need to shift the discourse on reproductive technologies from a science-driven issue to a women-centred issue. However, it was not the only feminist position to influence the debate on reproductive technologies. Other feminist positions, particularly liberal feminists, would offer an alternative perspective on reproductive technologies based on liberal notions of equality and choice.

In the late 1980s to early 1990s, liberal feminist theorists and activists began challenging the anti-science position of FINRRAGE and argued for equal access to reproductive technologies. The pro-choice position in the abortion debate of the 1970s and 1980s influenced the liberal feminist reaction to infertility treatments. Technologies, like *in vitro* fertilisation, were regarded as opportunities for the expansion of women's reproductive choices. Consistent with liberal notions of individual autonomy and the supremacy of the rational agent, this feminist position supported unfettered access to reproductive treatments for all individuals. As Lublin explains:

Pro-choice advocates have emphasised that people of conscience must support new reproductive arrangements such as embryo freezing, IVF, and surrogacy, arguing for expanded access to these procedures not only for infertile women and men, but also for single and lesbian women, single and homosexual men, and various minority and economically disadvantaged groups.¹⁹⁵

While the anti-technology position of FINRRAGE is embedded in a larger critique of science and scientific progress, the liberal feminist position regards technological advancements as inherently neutral. It articulates a 'feminist empiricist' approach to science and technology, which focuses on the social conditions of scientific research rather than the merits of the scientific method.¹⁹⁶ The underlying assumption here is that the negative or positive implications of reproductive treatments derive from the social contexts in which they are used. Petchesky¹⁹⁷ makes this point in her analysis of reproductive technologies and health care: "The very real potential for abuse, on the other hand, (e.g., pressure on women to undergo the procedure when it may be unnecessary or risky), is a function not of the technique but of the organisation and politics of existing medical care."¹⁹⁸ In contrast to FINRRAGE's call for a moratorium on reproductive technologies, liberal feminist positions advocate women's right to choose and access fertility treatments. Government should intervene only to ensure their safety and to protect the interests of women.¹⁹⁹

¹⁹⁵ Lublin, 1998:83.

¹⁹⁶ See Lorraine Code, *What Can She Know: Feminist Theory and the Construction of Knowledge*. (Ithaca: Cornell University Press, 1991).

¹⁹⁷ Rosalind Petchesky, *Abortion and Woman's Choice; the State, Sexuality, and Reproductive Freedom* (New York: Longman, 1984).

¹⁹⁸ Ibid., 362.

¹⁹⁹ Stanworth, 1987.

The religious and feminist reactions to reproductive technologies that emerged in the 1980s and 1990s greatly influenced public debate on embryo research, IVF and assisted insemination. It also provided the impetus for the mobilisation of societal organisations and groups in an effort to influence government policy in several countries, including Canada. This is the subject we turn to next.

The Canadian Citizens' Coalition for a Royal Commission on New Reproductive Technologies

The lack of public attention given to the moral and social implications of reproductive technologies prompted the formation of the 1987 Canadian Coalition for a Royal Commission on New Reproductive Technologies. Initiated by feminist organisations, researchers, and health groups, the Coalition argued discussions on reproductive technologies were being adjudicated without the input of civil society. The Coalition was especially concerned with the lack of attention conferred to the broader implications of these technologies on women. A royal commission was regarded as an effective vehicle to voice these concerns and to produce original research on the effectiveness of these so-called 'miracle' treatments. In 1987, the Coalition launched a large-scale, and intensive lobbying effort that included a number of different activities, including a rally on Parliament Hill, one-on-one meetings with individual politicians and Ministers, and a general and well-publicised meeting on Parliament Hill with representatives of all political parties. The main objectives of the group were to increase public awareness on the issue and make the case for the need of a royal commission.²⁰⁰

²⁰⁰ Margrit Eichler, "Frankenstein Meets Kafka: The Royal Commission on New Reproductive Technologies", in Gwynne Basen, Margrit Eichler, and Abby Lippman,

The desire for a government-appointed inquiry was very much influenced by the experience and legacy of 1967 Bird Commission on the Status of Women. Several members of the Coalition wanted to emulate the Bird Commission's success in raising awareness and consciousness nationally about women's issues. They viewed a royal commission as a powerful vehicle for politicising issues traditionally deemed personal or private matters.²⁰¹ The Bird Commission's legacy is an important one given that it sparked the mobilisation and organisation of many women's groups in Canada. It had provided the impetus for the creation of several influential women's groups, including the National Action Committee on the Status of Women. (NAC-SOW). The Commission held nation-wide public hearings and heard from individual women and women's groups from all parts of Canada.²⁰² The hearings also provided a forum for views that differed from the liberal-feminist perspective that influenced the Canadian women's movement. Several feminist organisations, like the Voice of Women, presented submissions that offered contending views on the source of women's unequal status in Canadian society. While these views did not alter the Commission's feminist liberal orientation, (which emphasised formal equality as opposed to substantive equality), they did wield some influence, especially,

eds, *Misconceptions: the Social Construction of Choice and the New Reproductive and Genetic Technologies* (Hull: Voyageur Publishing, 1995).

²⁰¹ Confidential interview with Respondent 14, September 1999; Confidential interview with Respondent 10, October 2001; Confidential interview with Respondent 11, October, 2001.

²⁰² Kome cited in Jill Vickers', *Politics as if Women Mattered; a Political Analysis of the National Action Committee on the Status of Women* (Toronto: University of Toronto Press, 1993).

...in broadening the range of analysis available to the Commission, and in challenging the Commissioners' frame of reference by demanding that they incorporate more differences than perhaps the Commission would otherwise have been prepared to consider.²⁰³

Another important consideration involved in the decision to lobby for a royal commission was its quasi-judicial status.²⁰⁴ As discussed in Chapter 2, royal commissions are often appointed by governments to uncover facts and evidence regarding government or industry misconduct. These commissions incorporate judicial processes and practices, including the use of lawyers, judges, and binding, legal or financial sanctions. Like courts in civil cases, royal commissions have the capacity to call witnesses and force them to provide evidence. The quasi-judicial power of royal commissions to question witnesses was an important consideration in the Coalition's lobbying efforts. The group argued that a royal commission could compel biomedical experts and industry representatives to divulge confidential information on the success rates of reproductive treatments and their long-term side effects on women. As one interviewee explained,

Since it is notoriously difficult - as it should be - to obtain medical data, this seemed the appropriate mechanism to acquire the basic empirical information that would allow the Canadian public to judge the various reproductive and genetic techniques.²⁰⁵

In October 1989, the federal government announced the appointment of the Royal Commission on New Reproductive Technologies. The Commission was asked to

²⁰³ Arscott, 43.

²⁰⁴ Confidential interview with Respondent 14; Interview with Louise Vandelac, May 2001.

²⁰⁵ Eichler, 1995: 215.

examine a wide range of technologies, including assisted insemination, *in vitro* fertilisation, embryo research, prenatal diagnosis techniques and surrogacy. One of the Commission's goals was to investigate the impact of these technologies on different segments of Canadian society, in particular women. The following chapter examines the Commission's research program and its public hearings and consultations.

Conclusions

In the past two decades, reproductive technologies were transformed from experimental treatments to routine medical practices. The naturalisation of these technologies was aided by the privileged status of medical authority and scientific knowledge in our society and by a committee system of review that excludes ordinary citizens from research decisions in science and medicine. As self-regulating bodies, ethics research committees upheld the values and practices of scientific experts and biomedical specialists.

In the 1980s, both government and civil society reacted to the ethical and legal dilemmas raised by these technologies. Western governments appointed a plethora of official and public inquiries to advise them on this new and complex policy matter. However, the majority of these inquiries lacked any mechanism for meaningful public input or accountability. Moreover, the recommendations of these inquiries validated professional authority in the area of reproductive technologies. Outside the official structures of the debate, religious and feminist groups were the most vocal opponents of these technologies. Their activism and research endeavours challenged the medical-scientific discourse on reproductive technologies and prompted a public debate on their impact on society. FINRRAGE was particularly instrumental in introducing an anti-

technology perspective and mobilising activists against reproductive technologies at both the international and national levels. As a social movement organisation, it was successful in creating a collective identity and developing new systems of meaning and knowledge on this issue. Canadian feminist groups and researchers took part in FINRRAGE's activities and launched a coalition for the appointment of a royal commission to shed light on the social and cultural implications of these technologies. Their lobbying efforts lead to the appointment of the federal Royal Commission on New Reproductive Technologies in 1989. The Coalition was optimistic that the Royal Commission would provide a forum for individuals and groups traditionally marginalised within the official discourse on reproductive technologies. The Commission's research work and public hearings had the potential to offer alternative perspectives to the medical-scientific understanding of reproductive technologies. The next chapter describes how the Commission did not fulfil this promise.

Chapter 5 - Communicating Ideas and Channelling Information: The Organisational Design of the RCNRTs

Introduction

This chapter examines the organisational attributes of the RCNRTs and explores how they contributed to the framing of the policy debate on reproductive technologies. It reveals that certain decisions taken by the Commission concerning its research program and consultations inevitably upheld the pre-eminence of medical-scientific expertise in the policy debate. This chapter contends that the Commission's internal structures and processes privileged the cognitive map of medical-scientific experts over those of not only non-expert fields, but in fact over other 'expert-driven' disciplines as well.

The chapter begins with a look at the appointment of the royal commission in 1989, its mandate and the composition of its Commissioners. The chapter then proceeds to an examination of the Commission's internal organisational structures and processes that impacted the framing of the debate on reproductive technologies.

First, it examines the structure of the Commission's research program and explores how it impacted the type of experts recruited by the Commission and the frame of reference it would use to evaluate these technologies. It reveals how the decision to structure the research program along technological and scientific categories reinforced the perception that reproductive technologies were primarily a scientific or legal issue.

Second, it considers the influence of Evidence-Based Medicine (EBM) in the Commission's research. The discussion reveals that the adoption of EBM as a guiding principle in the Commission's work would help privilege certain types of expertise over

others, creating a hierarchy in terms of the relevance or importance of certain academic disciplines in its work.

Third, it analyses the impact of the Commission's decision to separate research activities and policy analysis into two separate, functional units. It examines the rationale behind this organisational feature and its impact on the communication of ideas and the writing of the Final Report. The chapter contends that the Commission's decision to adopt a pyramidal organisational structure and to discourage lateral communication between the Research Branch and the Communications and Consultation Branch discouraged an open debate on reproductive technologies.

Fourth, the chapter explores the Commission's consultations and communications. It reveals that while the public hearings provided an opportunity for the general public to participate in the official discourse on reproductive technologies, community groups were unable to effectively challenge the cognitive authority of professional associations and medical experts.

Finally, the chapter examines some of the conflicts that plagued the working relationship among Commissioners and explore how they impacted the work of the Commission and hindered the development of a more open debate on reproductive technologies.

The mandate of the Royal Commission on New Reproductive Technologies

In response to the lobbying efforts of the Citizens' Coalition, the RCNRTs was appointed in 1989 under Part 1 of the *Inquiries Act*. It was asked to identify national policy needs and develop policy recommendations in the area of reproductive

technologies. The Commission was to inquire into the medical and legal issues involving these technologies; their implications for women's reproductive health and well-being; their social and legal arrangements, such as surrogacy; and 'ownership' rights and economic and commercial considerations, such as research funding and marketing regulations.²⁰⁶ The Commission's mandate was to examine a wide range of issues, in particular:

- Implications of new reproductive technologies for women's reproductive health and well-being
- The causes, treatment and prevention of male and female infertility
- Reversals of sterilisation procedures, artificial insemination, *in vitro* fertilisation, embryo transfers, prenatal screening and diagnostic techniques, genetic manipulation and therapeutic interventions to correct genetic anomalies, sex selection techniques, embryo experimentation and foetal tissue transplants
- Social and legal arrangements, such as surrogate childbearing, judicial interventions during gestation and birth, and 'ownership' of ova, sperm, embryos and foetal tissue
- The status and rights of people using or contributing to reproductive services, such as access to procedures, 'rights' to parenthood, informed consent, status of gamete donors and confidentiality, and the impact of these services on all concerned parties, particularly the children.
- The economic ramifications of these technologies, such as the commercial marketing of ova, sperm, and embryos, the application of patent law, and the funding of research and procedures including fertility treatments.²⁰⁷

²⁰⁶ Royal Commission On New Reproductive Technologies, *Proceed With Care: Final Report*, Vol. 1 (Ottawa: Minister of Government Services, 1993).

²⁰⁷ Privy Council of Canada, Order in Council No. P.C. 1989-2150.

As is the case with most federally appointed royal commissions, the Commission's membership reflected Canada's regional and linguistic diversity.²⁰⁸ Moreover, the multidisciplinary nature of the Commission's mandate and future work was reflected in the diverse disciplinary and professional backgrounds of the seven individuals appointed to the Commission. Individual Commissioners represented different fields of expertise, including medicine, genetics, law, theology, sociology and anthropology. The Chairperson, Patricia Baird, was a Professor of medical genetics at the University of British Columbia and a member of the Science Council of Canada Study Committee on Genetic Predisposition. Dr. Bruce Hatfield was a specialist in internal medicine and sat on a number of associations on medical ethics. Martin Hebert and Maureen McTeer brought to the Commission their legal expertise. Hebert was a Quebec-based lawyer and specialist in the field of medical and health law and had worked in Britain for Warnock Committee on reproductive technologies. McTeer, a lawyer and self-described liberal feminist had been actively involved in the coalition of women's groups that had lobbied the government for the appointment of the Royal Commission.

The social sciences were represented by three of the appointed Commissioners. Louise Vandelac, a sociologist and social deconstructionist feminist from the Université du Québec à Montréal published extensively in the area of reproductive technologies and women's health. Suzanne Rozell Scorsone was an anthropologist who took leave from her work at the Office of the Catholic Family Life of the Toronto's Archdiocese. Finally,

²⁰⁸ Two of the original commissioners were French-speaking Canadians residing in Montreal; one Commissioner came from British Columbia while another commissioner

Grace Jantzen, the only non-Canadian appointed to the Commission, was a lecturer on the philosophy of religion at King's College, in London, England. Like Hebert, Jantzen had also worked on the Warnock Committee in Britain.

On December 6-7, 1989, approximately a month after the government announced the appointment of the Royal Commission, the Commissioners held their first meeting in Toronto. During this meeting, the Commissioners discussed their perspectives on the issue of reproductive technologies and had a preliminary discussion on the terms of reference for the Commission's work. However, as expected, administrative issues dominated the agenda of the first meeting. Bill Pratt, the operations co-ordinator of the Royal Commissions Directorate of the Privy Council Office, briefed the Commissioners on the status of the Commission and other administrative details. The briefing's main focus was the issue of confidentiality and the role and responsibilities of the Commission's Chairperson. Pratt informed the members that the Chairperson was accountable to the Prime Minister for all financial matters and that she, along with the Executive Director of the Commission, John Sinclair, were responsible for hiring Commission staff and outside researchers. Moreover, Chairperson Baird would act as the main spokesperson and media contact for the Commission. Commissioners and staff were asked to keep the Commission's internal deliberations confidential unless permission had been granted from the Privy Council.²⁰⁹

By late January 1990, the Commissioners were engaged in the planning and structuring of the Commission's work. As is the case with most policy-advisory royal

came from Calgary, Alberta; two commissioners came from Ontario while one commissioner came from England.

²⁰⁹ Minutes of December 6-7, 1989 meeting, Toronto.

commissions, the Commission organised its work into research and public consultations. This dissertation contends that the way in which the RCNRTs structured these activities significantly influenced the framing of the debate.

Determining the Commission's research agenda

By the end of March 1990, five months after its appointment, the Commission had devised a number of different strategies to consult with experts on the issue of the research program, including private sessions with visiting experts, colloquia, and a 'search' conference on new reproductive technologies. Visiting experts in the field of reproductive technologies were invited to speak with Commissioners during their private meetings. On a regular basis, experts from a variety of backgrounds were invited to present their work and opinions during the Commissioners' private meetings. Experts who had worked on other inquiries also were invited to share their experiences with the Commissioners. One of the earliest experts consulted by the Commissioners was British scholar, Patricia Spallone, a feminist theorist and former researcher for Britain's Warnock Committee. Spallone outlined what she perceived to be failures of the British inquiry, including its lack of a solid ethical framework for arriving at recommendations; its neglect of women's perspectives; and its failure to produce original research and epidemiological data. Spallone encouraged Commissioners to address these issues when devising their research program and consultation process.²¹⁰

In March 1990, the Commission began organising a number of symposia and colloquia to bring together experts and practitioners from a variety of academic and professional backgrounds. The earliest colloquia and symposia focused on broad issues

surrounding the issue of reproductive technologies, such as the moral and ethical aspects of reproductive technologies, and their impacts upon women's reproductive health and well being. Several of the experts who participated in these activities were well known internationally for their work on reproductive technologies.²¹¹ The participation of international experts in the initial colloquia reflected the Commission's early preoccupation with knowing how other countries were responding to the issue of reproductive technologies.²¹² In time, colloquia and symposia began looking at more narrowly- defined issues related to reproductive technologies. At the end of 1990, a number of colloquia and 'roundtables' had been organised to investigate a broad range of issues, such as the training and education of professionals in reproductive medicine, infertility and involuntary childlessness, surrogacy, and decision-making models and risk assessment.²¹³

The Commission also held a 'search conference', which brought together a large number of experts and practitioners in the field of reproductive technologies. In June 1990, over thirty individuals representing various community groups and professional backgrounds participated in a 2-day conference to help the Commission identify themes and issues relevant to its mandate. Four workshops were organised to investigate specific topics. The purpose of these workshops was two-fold: First, the workshops would serve as vehicles for the Commission to inform experts of its research agenda and keep them

²¹⁰ Minutes of Commissioners' meeting, April 26-27, 1990.

²¹¹ For example, participants of the Colloquium on ethics included Spallone, who had written extensively on the issue of women and reproductive technologies in Britain. The Commission also heard from a British professor of theology who was a member of the Interim Licensing Authority for fertility clinics in London, England.

²¹² Confidential Interview with Respondent 1, September 3, 1999; Confidential Interview with Respondent 3, September 15, 1999.

abreast of the Commission's 'thinking' on certain issues. Second, the workshops would provide a forum for experts from different disciplines to discuss and debate issues surrounding reproductive technologies.²¹⁴

Of these thirty participants, over a third came from medical or scientific backgrounds, with a particular emphasis on reproductive medicine and genetics. The second and third largest groups represented in the search conference were lawyers and representatives of women's advocacy groups.²¹⁵ A small number of participants were recruited from the fields of religion, philosophy, and sociology. Two participants came from the biomedical / pharmaceutical industry and two participants represented infertility awareness associations.²¹⁶

The background of experts who participated in the search conference suggests that the Commission regarded medical-scientific knowledge as more relevant to their work than other types of expertise. Several participants at the conference felt that the medical perspective enjoyed a privileged status over other disciplines, such as sociology and religion.²¹⁷ Moreover, while the conference was supposed to bring together the combined expertise of law, medicine, sociology, and philosophy to identify gaps in current research, a number of conference participants were left with the impression that

²¹³ RCNRTs, *Proceed with Care:: Final Report*, 1993.

²¹⁴ Minutes of July 31, 1990 meeting of Commissioners, Vancouver.

²¹⁵ Representatives from four women's groups and three legal organisations participated in the search conference. Two additional participants represented legal organisations working in the area of women's issues.

²¹⁶ Final Report, 1993.

²¹⁷ Confidential Interview with Respondent 1, September 3, 1999; Interview with Louise Vandelac, May 2001; Confidential Interview with Respondent 11, October 2001.

the Chairperson had already decided on the research areas and the approach the Commission would adopt.²¹⁸

While several critics attribute the failure of the conference to Chairperson Baird, one participant, blames the “incompetence” of the consulting firm hired to organise the conference. An academic researcher that had participated in the conference argued that the consulting firm had little knowledge of the issue of reproductive technologies. Their main expertise was in facilitating meetings in a ‘very technical, professional way’.²¹⁹ The conference was organised into small workshops with specific and narrowly defined topics. Participants were assigned to workshops by the consultants and then were not permitted to vary from the assigned tasks. The participant recalled that facilitators assigned to each workshop would block any effort to reframe the debate or to question the relevance of the assigned topics. “They were the professionals. They came with a list of the right way to address these questions”.²²⁰ This approach stifled people who wanted to talk about women’s health issues or the impact of these technologies on persons with disability.

Many of the participants soon became frustrated with the whole process, including four of the Commissioners, Vandelac, McTeer, Hebert, and Hatfield. The four dissenting Commissioners organised an informal and late night meeting at the airport before leaving Nova Scotia to discuss their concerns about the Chairperson’s role in the situation.²²¹ Feminist researchers got together soon after the conference ended to discuss

²¹⁸ Interview with Louise Vandelac; Eichler, 1993.

²¹⁹ Confidential Interview with Respondent 11.

²²⁰ Ibid.

²²¹ Ibid; Interview with Louise Vandelac.

process. “About seven or eight of us like-minded folks got together to discuss what went wrong and to ask ourselves ‘What are we doing here? Are we [as feminists] being co-opted?’”²²²

By some accounts, the lack of trust plaguing the Commission throughout its term, especially among the Commissioners, can be traced to the mishandling of this search conference by the consulting firm. As a former conference participant explained, “This was actually the time the original mutiny occurred...the four [Commissioners] couldn’t stand what was going on...”²²³ This mistrust would continue to characterise the working relationship between the four Commissioners and the Chairperson.

Structuring the research program

While the consultations and public hearings were set up a short time after the appointment of the Commission, the development of the research program proceeded at a much slower pace. A number of factors impeded the advancement of the research agenda and program. The position of the research director was not permanently filled until July 1990. The original research director, Susan Mann, a professor of women’s studies at the University of Ottawa, resigned three weeks into her mandate, citing personal reasons.²²⁴ A former staff member, however, argued that the resignation was precipitated by one of the Commissioners’ disapproval of Mann’s hiring because of her lack of knowledge in the subject matter.²²⁵ By some accounts, the position of the research director was a job

²²¹ Ibid; Interview with Louise Vandelac,.

²²² Ibid.

²²³ Confidential interview with Respondent 11, October 2001; Interview with Louise Vandelac.

²²⁴ Personal correspondence with Respondent 5, March 2001.

²²⁵ Confidential interview with Respondent 9, September 5, 2001.

the subject matter.²²⁵ By some accounts, the position of the research director was a job that few people wanted.²²⁶ Moreover, the development of the research program was regarded as a more difficult undertaking than the organisation of the Commission's consultation process given that most participants during hearings already possessed clear and well-established positions. As one staff member explained,

It was easier to organise public hearings. A lot of groups had positions they wanted to advance. They had specific claims, specific opinions they wanted to be made public. It was a no brainer. It wasn't too hard to set up public hearings as opposed to the research program that had to be thought out and had to complement the information Commissioners were hearing unsolicited.²²⁷

By the time the permanent research director, Sylvia Gold, was hired, the research program had already been established by the Chair and the Executive Director of the Commission, John Sinclair. The Commission's research program was structured along four general categories of medical practices and technologies. These general areas were,

...the prevalence, risk factors, and prevention of infertility; methods of assisted human reproduction; prenatal diagnosis techniques and genetics; and research involving human zygotes and embryos and involving foetal tissue.²²⁸

Each group was assigned a deputy director and several research coordinators who were responsible for identifying the experts in their respective fields and for contracting research projects.

²²⁵ Confidential interview with Respondent 9, September 5, 2001.

²²⁶ Confidential interview with Respondent 2, September 13, 2001; Confidential interview with Respondent 14.

²²⁷ Confidential interview with Respondent 2.

²²⁸ RCNRTs, *Proceed with Care – Final Report*: .5.

The decision to structure the research program along the technologies themselves would have a significant impact on the type of experts recruited by the Commission and consequently the terms of reference that would be used to evaluate these technologies. While the Research Branch recruited experts from a variety of disciplines, from law and biomedicine to sociology and ethics, the vast majority of experts came from scientific, medical, or legal backgrounds.²²⁹

Several former staff members recalled that the Commission's overall research program reflected a general bias in favour of scientific and medical expertise over that of other disciplines. Early on, several staff members and Commissioners believed that disciplines and expertise were placed in a hierarchical order depending on their importance to the Commission's research agenda.²³⁰ Medicine and science were regarded as the most important and relevant disciplines to the issue of reproductive technologies while sociology, philosophy and religion were regarded as 'fillers' in the broader scientific examination of the issues.²³¹

Studies on embryo research were also conducted predominately by scientists or medical experts. Scientific "'institutes of excellence'"²³² in embryo research were contacted in order to obtain the names of leading experts in the field. Not surprisingly, this would lead to the recruitment of medical-scientific experts who shared the same worldview on the issue of embryo research. For example, two of the researchers hired by

²²⁹ Confidential interview with Respondent 6, May 17, 2001; Confidential interview with Respondent 1.

²³⁰ Confidential interview with Respondent 1; Confidential interview with Respondent 8, September 2001; Confidential interview with Respondent 4, May 10, 2001.

²³¹ Confidential interview with Respondent 1; Confidential interview with Respondent 8; Confidential interview with Respondent 6.

the Commission, Bernard Dickens and Michelle Mullen, were professors in the Faculty of Medicine at the University of Toronto. Both examined the issue from a medical-scientific perspective, advocating regulation rather than criminalisation of embryo, and foetal tissue transplantation. Keith Betteridge and Don Rieger, leading researchers in animal embryology, were also recruited to write a study on the scientific merits of embryo transfer and related technologies in domestic animals.²³³ Once the permanent director was hired to manage the research team on *Embryo Research*, his legal background led to the commissioning of 'legal' type research projects. The social sciences, however, were absent in this research area.²³⁴

The research team on prenatal diagnosis and genetic technologies also drew experts from the medical-scientific community. Indeed, the Deputy Director assigned to this research was F.C Fraser, a geneticist, who was a close colleague of Chairperson Baird. While a few social scientists were recruited to explore the impact of these technologies on pregnant women and the disabled, medical and scientific experts in the field carried out the majority of the studies. Most of the social scientific research focused

²³² Confidential interview with Respondent 2.

²³³ See M.A. Mullen, *The Use of Human Embryos and Foetal Tissues: A Research Architecture*, Volume 15, Royal Commission on New Reproductive Technologies, 1993; B.M Dickens, *Legal Issues in Embryo and Foetal Tissue Research and Therapy*, Volume 15, Royal Commission on New Reproductive Technologies, 1993; K.J. Betteridge and D. Rieger, *Embryo Transfer and Related Technologies in Domestic Animals: Their History, Current Status and Future Direction, with Special Reference to Implications for Human Medicine*, Volume 15, Royal Commission on New Reproductive Technologies, 1993.

²³⁴ The Commission did not advertise to recruit researchers from the outside. Rather, it approached experts identified through 'word-of-mouth' recommendations.

on the availability and quality of the delivery of prenatal services, including genetic counselling, a current preoccupation in human genetics.²³⁵

Along with medical and legal experts, SPR Associates Inc., a consulting firm that has worked for the pharmaceutical industry in the past, was hired to conduct research on the use and handling of human reproductive tissues in Canadian health care facilities and medical laboratories. The research findings were based on a survey of facilities and clinics providing fertility treatments and conducting research in the area of reproductive technologies. The two research projects were subsequently criticised by several Commissioners, outside research institutes, and academics because of a perceived conflict of interest on the part of SPR. Critics argued that SPR's ties with the pharmaceutical and biotechnology industries biased their research findings towards current practices and treatments in fertility clinics.²³⁶ Indeed, the consulting firm's findings ultimately affirmed current practices in embryo research and the handling of embryos and foetal tissues and espoused the benefits of self-regulation as a governance regime for the biomedical industry.

The two other research teams – *Prevalence and Prevention of Infertility*, and *Human-Assisted Reproduction* – drew from a wider spectrum of backgrounds. Both deputy directors were health policy specialists, with academic backgrounds in the social sciences. They, in turn, recruited several social scientists, representing diverse areas of specialisation, including history, family studies, and philosophy. However, even in these groups, the medical-scientific model for evaluating the technologies would shape the

²³⁵ Confidential interview with Respondent 6; Confidential interview with Respondent 8.

research direction of the team. An important factor that would contribute to the marginalisation of non-scientific perspectives was the adoption of ‘evidence-based research’ as a guiding principle in the Commission’s work.

Evidence-Based Research and the privileging of the quantitative method.

One of the reasons for the scientific orientation of the research was the emphasis placed on ‘evidence-based research’ and ‘meta-analysis’ by the Commission, two approaches borrowed from the field of medicine.²³⁷ ‘Evidence-Based Medicine’ (EBM) was originally developed by professors at McMaster University in the 1980s to teach medical students.²³⁸ It utilises quantitative methods, such as meta-analysis, decision analysis, and cost-effectiveness analysis, to synthesise evidence needed to make clinical decisions and formulate public policy in health care. All three methods increasingly were being taught in medical schools and schools of public health at the undergraduate and graduate level.²³⁹ It soon became a popular approach to clinical problem solving, here and abroad. According to the American Medical Association, (AMA), Evidence-based medicine constitutes a new paradigm for medical practice which,

²³⁶ Eichler, 1993; Confidential interview with Respondent 8; Interview with Louise Vandelac.

²³⁷ Confidential interview with Respondent 9. This former senior staff member recalls never having heard of EBR before working for the Commission.

²³⁸ Confidential interview with Respondent 8.

²³⁹ Diana B. Petitti, *Meta-Analysis, Decision Analysis, and Cost-Effectiveness Analysis: Methods for Quantitative Synthesis in Medicine* (Oxford: Oxford University Press, 1999).

...de-emphasises intuition, unsystematic clinical experience, and pathophysiologic rationale as sufficient grounds for clinical decision-making, and stresses the examination of evidence from clinical research. Evidence-Based Medicine requires new skills of the physician, including efficient literature-searching, and *the application of formal rules of evidence* in evaluating the clinical literature.” (Emphasis added)²⁴⁰

Evidence-Based Medicine, while not displacing traditional methods of history taking, physical examination and diagnostic strategies, emphasizes the importance of formal scientific investigation. Medical practitioners are encouraged to record their observations systematically, and to examine the results of studies using rules of evidence.

At the time of the Commission’s deliberations, EBM was fast becoming a popular tool among decision-makers in the health care system. It was and is regarded as an effective tool for setting priorities in health care and for determining the cost-effectiveness of treatments and services.²⁴¹ The Commission adopted Evidence-Based Research practices to evaluate the cost-effectiveness of fertility treatments in the context of Canada’s health care system. EBM was regarded by the Commission as a ‘rational’ approach to determining the most effective use of finite resources.

²⁴⁰ American Medical Association, “Users’ Guides to Evidence-based Medicine”, *Journal of the American Medical Association*, Nov 4; 268(17): 2420-5.

²⁴¹ Ibid.

Decisions about which services are publicly supported through provincial health insurance coverage have been influenced historically not by evaluation results but by lobbying, media coverage, and emotional appeals. Many Canadians continue to believe, however, that funding and diffusion of health care technologies are rational...and closely related to effectiveness. In fact, analysis of patterns of technology use shows that the inherent attributes of a given health technology (effectiveness, safety) are not related in any consistent way to its diffusion. Not surprisingly, this situation is of great concern to governments, which now want to be able to make empirical, evidence-based decisions about how much of which technologies or procedures should be provided.²⁴²

Declining economic growth, rising health care costs and the expanding definition of health services made the cost-effectiveness of NRTs an important area of study, for both government and the Commission. The issue of health care funding of reproductive technologies, as well as their effectiveness and safety as medical treatments would become a central theme in the Commission's.²⁴³

The adoption of Evidence-Based Research as the guiding principle in the Commission's work would inevitably privilege disciplines that could produce 'hard' facts through the scientific method. A former staff member working in the area of infertility and prevention stated that social scientists hired by the Commission had a difficult time grappling with the evidence-based approach and its rules of evidence. Social scientists were repeatedly asked by senior staff members and the Chair to substantiate their positions with hard data. 'Where is the data' was a recurring question posed to social scientists by the Chair and her staff. As the former staff member explained, "Every time

²⁴² RCNRTs, *Proceed with Care - Final Report*, 1993.

we tried to broaden the view of infertility [from a narrowly focused medical condition] we were asked to be responsible and to provide hard data on how many people are infertile. There was no database in Canada with this information..."²⁴⁴ Indeed, the Commission's preference for the quantitative mode of inquiry led to a shift in focus from prevention and alternatives to reproductive technologies to determining the rate of infertility in Canadian society.²⁴⁵

Research proposals that did not conform to the technological categories of the research program and the methodological requirements of Evidence-Based Research were often seen as obstructing the work of the Commission. For example, one researcher wanted to conduct a study on the prevention of infertility but the proposal was rejected outright because it did not conform to the narrow interpretation of the research agenda, which emphasised access to treatments and their safety. All other research was seen as "muddying the waters" and researchers who tried to challenge the dominant discourse were regarded with suspicion among top-level managers and the Chair.²⁴⁶ As a former staff member explained, "Researchers were viewed (by Patricia Baird) as an impediment to the drafting of the Final Report. It seems researchers were constantly irritating Dr. Baird by pointing out 'minor' problems, such as major gaps in the research."²⁴⁷

Other researchers also felt that the Commission regarded quantitative methods as the best tools for producing policy-relevant knowledge. A former staff member studying

²⁴³ See *New Reproductive Technologies and the Health Care System: The Case for Evidence-Based Medicine*, Research Volume 11 of the Royal Commission on New Reproductive Technologies. Minister of Government Services, 1993.

²⁴⁴ Confidential interview with Respondent 8.

²⁴⁵ Confidential interview with Respondent 6..

²⁴⁶ Confidential interview with Respondent 1; Confidential interview with Respondent 8.

embryo research recalled that quantitative data was valued over qualitative approaches because it was considered to be more 'neutral'. The staff member argued that the role of researchers in the Commission's work was to "collect and coalesce up-to-date information. The social aspect or qualitative dimension of the research was to be dealt with elsewhere, within the Commission's Consultation and Communications Branch."²⁴⁸ The perception among upper management and some of the staff members was that the Research Branch would be responsible for producing 'objective', empirical knowledge, while the Consultations Branch would provide qualitative analysis of what was heard during the public hearings.

Two external researchers hired that did a couple of the qualitative studies also recalled that there was a clear preference for quantitative research.²⁴⁹ One researcher, whose area of interest was prenatal diagnosis, recalls receiving some negative comments on her research proposal due to its qualitative methodology. While her proposal was eventually accepted, she felt it was important to justify the qualitative approach in her study and its methodological rigor and reliability.²⁵⁰

The adoption of Evidence-Based Research and quantitative methods in the Commission's work led to more calls for objectivity in the social scientific research. During the review process, several researchers were frequently asked to offer a more "balanced" analysis of their subject matter and to use neutral language. One researcher recalls being asked to avoid using certain terms, including 'patriarchy' and 'eugenics' when analysing

²⁴⁷ Quoted in Eichler, 1992: p. 217.

²⁴⁸ Confidential interview with Respondent 4.

²⁴⁹ Confidential interview with Respondent 10, October 29, 2001; Confidential interview with Respondent 12, November 5, 2001.

the issue of surrogacy. The researcher found these types of comments extremely heavy-handed and difficult to deal with. "I couldn't understand how we could have a discussion on surrogacy without mentioning patriarchy?"²⁵¹ Another interviewee cites a case where one researcher was asked to replace the term 'judicial interference' with 'judicial intervention' in her research because the latter was viewed as being more neutral. A former staff member who oversaw some of the research projects argued that changes in wording were sometimes necessary in order to avoid any semblance of 'bias' in the research.

With judicial interference, you don't have to read any further. You've already telegraphed your conclusion... If you decide a certain practice is negative, you better put forward data to support your conclusion.²⁵²

Researchers themselves were divided on which sets of values should govern the research work. This would lead to different interpretations of several issues, including who should be determining the Commission's research agenda and program and the level of control exercised by the Chairperson on research matters. For example, while one group of researchers resented the lack of autonomy afforded to them by Chairperson Baird, others had no problems with her control of the research program. As one interviewee explained:

My feeling is this: The Chair is appointed by an Order-in-Council. The Prime Minister asks Patricia Baird basically to design the research and *we were the arms of that decision-maker*. He [the Prime Minister] didn't ask me... Ultimately the success or failure lies with that decision-maker.²⁵³

²⁵⁰ Confidential interview with Respondent 12..

²⁵¹ Confidential interview with Respondent 6.

²⁵² Confidential interview with Respondent 4.

²⁵³ Confidential interview with Respondent 4. Emphasis added.

The willingness of researchers to accept requests for changes to their studies varied according to how they interpreted their role in the Commission's work. According to a former staff member working in the Research Branch, private researchers or consultants hired by the Commission were more likely to accept revisions to their work than university-based researchers.²⁵⁴ Non-university researchers were said to be more accommodating than their academic counterparts who resisted any changes to their work. The positions taken by researchers on the review process depended on whether they saw themselves primarily as policy advisors and consultants or as independent academics governed by the principles of discipline-oriented research. Several researchers, working both inside and outside the Commission, saw themselves as consultants hired to meet the needs of their client.²⁵⁵ The client, in this case, was the Commissioners. Several of these researchers had prior experience with consulting for government agencies and were familiar with this type of review process. Some of the researchers inside the Commission also viewed their role as producing knowledge that the Commissioners needed to inform their decisions. As one former staff member stated, "The Royal Commission...had a mandate. It had very specific objectives. It had to write a report. And, as such, it needed very particular elements of research to build this edifice of knowledge".²⁵⁶

Conversely, other researchers, in particular those recruited from the social sciences, felt that the Commission exercised too much control over their work. Several of

²⁵⁴ Confidential interview with Respondent 6. This person was in charge of overseeing and coordinating a number of outside research projects, reviewing draft submissions and helping rewrite projects.

²⁵⁵ Confidential interview with Respondent 10.

²⁵⁶ Confidential interview with Respondent 4.

them felt that they were being asked to make substantive changes to their work.²⁵⁷ One former Commissioner, Bartha Knoppers, however, argued that research studies are public documents and therefore Commissioners should have a “light editorial hand” in the review process to ensure balance.

An author has the freedom to say that certain practices could be considered eugenics or in some countries there were eugenic laws, like sterilisation laws. It depends on how these technologies are used. But with that kind of inflammatory language, you want the research read in a way that brings forth knowledge not coloured by bias...²⁵⁸

The review process put in place by the Commission was also criticised by some staff members and researchers for not conforming to academic norms and standards. For the most part, proposals and studies were reviewed not by academic peers, but by the Research Director, the Executive Director, and the Chairperson. Chairperson Baird was especially prolific, offering detailed comments and suggestions on almost every proposal and study received by the Commission. Both her supporters and detractors characterised Baird as a hard worker, taking an active interest in every aspect of the Commission’s work. However, while her supporters described her feedback as providing “firm direction”²⁵⁹, her critics regarded it as pushing the research into a different direction.

Ultimately, Evidence-Based Research, and the quantitative methods it uses, influenced the direction of the Commission’s research. For example, a large segment of the research conducted in these four areas relied heavily upon empirical-analytical

²⁵⁷ Confidential interview with Respondent 6; Confidential interview with Respondent 8; Confidential interview with Respondent 1.

²⁵⁸ Interview with Bartha Knoppers, July, 2001.

²⁵⁹ Confidential interview with Respondent 4; Confidential interview with Respondent 2; Interview with Suzanne Scorsone.

methods, causal explanations and technical expertise. The combined chapters on infertility were basically an extensive review of existing scientific literature on the underlying causes of infertility. Data on the prevalence of infertility and its link with possible causes, like sexually transmitted diseases, hazardous materials, and smoking was highly technical and relied heavily upon survey methods and biomedical research. This body of research considered some of the social and environmental causes of infertility and examined preventive measures that would preclude the use of reproductive technologies.

Cost-benefit analysis and meta-analysis²⁶⁰ were some of the Evidence-Based Research methods used to evaluate the effectiveness of treatments and the actual and potential risks for the user. The Commission relied heavily on the expertise of researchers affiliated with two health technology assessments centres: University of British Columbia's Office of Health Technology Assessment and the Manitoba Centre for Health Policy and Evaluation at the University of Manitoba. These centres were two of several research institutes established by provincial governments in the late 1980s and early 1990s to evaluate the effectiveness and efficiency of medical technologies and services. Other researchers were also recruited from McMaster University's Centre of Clinical Epidemiology and Biostatistics. Ron Goeree and Roberta Labelle were specialists in evidence-based medicine and had published extensively on the economic evaluation of medical treatments and practices. The research found that funding decisions in the area of reproductive technologies have been made in an *ad hoc* and fragmented

²⁶⁰ Meta-analysis, is defined as "a statistical method of quantitatively combining and synthesising results from individual studies". Stephen P. Hoffert, "Meta-Analysis Gaining Status In Science And Policymaking", *The Scientist*, 11[18]: 1, Sep. 15, 1997

manner, without reference to available evidence on treatment effectiveness and safety.²⁶¹ Much of this research focused on establishing, in scientific terms, whether or not technologies, like *in vitro* fertilisation, should be regarded as experimental treatments or routine procedures to be covered by Medicare. There was little discussion in the research regarding whether having a genetically related child was a privilege or a right that should be protected by the state *via* the availability of state-subsidised fertility treatments.

The legal research generated by the Commission reflected the traditional concerns of legal analysis of policy issues, such as constitutionality, consistency with statutes, human rights, and questions about jurisdiction.²⁶² Some of the research studies analysed the implications of reproductive technologies on the legal status of children and parents. Questions that were raised and addressed included ‘Who can claim the children produced from a donated ovum or embryo?’ and ‘Who is the legal parent in the cases of surrogacy?’ However, the majority of the studies produced by legal experts focused on the implications of reproductive technologies for Canada’s current legal system and their impact on Canadian laws governing commercial interests and the medical community.²⁶³ Moreover, some Commissioners and staff members felt that too much of the legal

²⁶¹ For example, decisions regarding the funding and dissemination of In Vitro Fertilisation (IVF) have not been influenced by evidence showing the IVF is associated with serious risks, including ovarian hyper stimulation syndrome in 1-2% of women treated with ovulation drugs, and undesirable multiple gestation in approximately 25% of IVF pregnancies. Moreover while the estimate costs of IVF is approximately \$10,000, the success rates for healthy births are between 5% to 10%.

²⁶² Leslie Pal, *Beyond Policy Analysis: Public Issue Management in Turbulent Times* (Toronto: ITP Nelson, 1997).

²⁶³ These legal studies included *New Reproductive Technologies: Commercial Protection*; *Reproductive Technology: Is a Property Law Regime Appropriate*; and *Overview of Canadian Laws Relating to Privacy and Confidentiality in the Medical Context*.

research concentrated on issues surrounding informed consent of patients undergoing fertility treatments.

There seems to a growing tendency to use the notion of consent as a modality for transferring responsibility for experimentation from the researcher to the individual object of experimentation. This is obviously the logic that underlies the Baird Commission giving so many research contracts to examining the issue of informed consent.²⁶⁴

Little research was conducted on the legal rights of women or couples *vis-à-vis* the medical community or the biomedical industry; the only legal research that examined women's issues was a study on judicial intervention in pregnancy and childbirth, and a legal-ethical analysis of surrogate motherhood.

A small number of studies were commissioned on the social and ethical dimensions of both infertility and reproductive technologies. These studies drew attention to a number of issues, including the commercial or scientific exploitation of embryos and genetic engineering, and the implications of reproductive technologies for women and for ethno-cultural communities. For example, studies were conducted on the impact of prenatal diagnosis on attitudes toward the disabled as well as women's experiences with technology during pregnancy. Background papers were also commissioned on the global and political economic contexts of reproductive technologies. However, the scientific and legal studies far outnumbered studies examining the commercial dimension of reproductive technologies. Furthermore, most

²⁶⁴ Louise Vandelac, "The Baird Commission From "Access" to "Reproductive Technologies" to the "Excesses" of Practitioners of the Art of Diversion and Relentless Pursuit..." in Gwynne Bassen, Margrit Eichler, and Abby Lippman, eds, *Misconceptions: The Social Construction of Choice and the New Reproductive and Genetic Technologies* (Hull: Voyageur Publishing, 1993): 272.

of these studies were considered supplemental parts of the larger scientific or legal research projects.²⁶⁵

Questions surrounding the implications of reproductive technologies on certain segments of society, including women, ethno-cultural communities, and the disabled were not afforded their own research area. Rather, they were dispersed among the four scientific research areas. Moreover, the volume of studies on society-related issues was narrow in scope and analysis. Two studies were essentially descriptions of current social values and attitudes of Canadians toward reproductive technologies. Indeed, the author of these studies was Decima Research, a survey firm whose findings were derived from focus groups and a nation-wide survey. The purpose of the two studies was to take a 'snap shot' of current public opinion on reproductive technologies rather than provide an analysis of their origins or social implications.

The decision to organise the research program along technological categories and the adoption of Evidence-Based Research as a guiding principle in the Commission's work helped advance the medical-scientific framing of reproductive technologies. It reaffirmed the status of medical-scientific experts in the policy debate on reproductive technologies and marginalised research areas that could not be evaluated through scientific rules of evidence. Social scientists interested in uncovering social and moral implications of these technologies were asked to provide 'hard data' to substantiate their claims.

²⁶⁵ Confidential interview with Respondent 1; Confidential interview with Respondent 8; Interview with Louise Vandelac.

These findings are consistent with Simeon's argument that royal commissions tend to privilege academic disciplines that provide a consistent and unified approach to understanding a particular issue. For the Macdonald Commission, the neo-classical model of economics provided Commissioners a clear framework for devising economic policy in Canada. The medical-scientific model did the same for the Commission on reproductive technologies.

Listening to citizens: the Commission's public hearings and 'armchair' sessions

Public hearings and 'armchair' sessions with Commissioners became the primary vehicles for citizen participation in the Commission's work on reproductive technologies. From September 11, 1990 to November 29, 1990, Commissioners held public hearings in seventeen cities across Canada. Most of the hearings were held in major cities, except for two, which were held in Yellowknife, North West Territories and Whitehorse, Yukon. Rural regions were largely excluded from the Commission's scheduled public hearings. The rural perspective on reproductive technologies only emerged during the public hearing in Saskatoon. The Commission publicised the public hearings *via* advertisements in local newspapers and by posting notices in relevant institutions, including fertility clinics. Individuals and groups who expressed a desire to participate in the public hearings were asked to provide the Commission with briefs prior to scheduled presentations in order to prepare Commissioners for ensuing discussions.

Over 250 individuals and groups, representing a variety of backgrounds, interests, and expertise, participated in the Commission's public hearings. Organisations representing the legal and biomedical professions, women's advocacy groups, and religious and 'pro-family' organisations, sent submissions and/ or appeared before the

Commissioners. However, certain groups were better prepared than others in their presentations to the Commissioners. Large professional organisations, like the Medical Research Council, the Canadian Bar Association, and the Canadian Law Reform Board presented substantial and well-researched briefs containing highly technical language. For example, the Canadian Law Reform Board submitted a 200 page document outlining the legal issues raised by reproductive technologies, such as ownership rights *vis-à-vis* ovum and embryos, parental rights *vis-à-vis* children resulting from fertility treatments, and professional and commercial liability. Much of this research was the culmination of the work of professional committees established before the Commission's appointment. Legal and medical associations had already established interdisciplinary committees to look into the issue of reproductive technologies. For example, in Alberta, a committee established by the Alberta Branch of the Canadian Bar Association and the Alberta Medical Association had been meeting prior to the appointment of the Commission to discuss the medical-legal issues posed by reproductive technologies.²⁶⁶

Another well-organised constituency group was the anti-abortion coalition movement made up of anti-abortion groups, and religious organisations. These groups viewed the appointment of the Commission as an opportunity to revisit the issues of foetal rights and the criminalisation of abortion. Because of its long-standing involvement in the abortion debate over the past two decades, the anti-abortion coalition was able to successfully mobilise and prepare its member organisations for the Royal Commission's hearings. The success of its mobilisation efforts was made evident by the

²⁶⁶ Brief presented by Noella Inions for the Alberta Branch of the Canadian Bar Association, September 13, 1990.

fact that every public hearing heard from at least one anti-abortion group with ready-made, pro-life arguments against reproductive technologies.

Women's organisations and community groups were also well represented in the public hearings. However, unlike the professional associations who were heard during the public hearings, these groups lacked the resources to conduct extensive research on the issue of reproductive technologies and to engage in extensive consultations with their members. There were a number of reasons for this lack of preparation. First, as volunteer organisations, women's and community groups are faced with a number of financial and administrative challenges that impede their capacity to fully participate in a single-issue debate. As Massey explains:

While many of Canada's women's groups had begun to do some work on the issue, NRTs were still a new and emerging issue that suffered from a significant lack of information. Furthermore, NRTs could be only one focus of the ever-expanding agenda of "women's issues" in which these chronically under-funded groups are involved...Some found it difficult to develop enough expertise in a new area to present their concerns to an official body, especially in the short time allotted.²⁶⁷

Another obstacle facing women and community groups in preparing their briefings was the Commission's hearings schedule. As mentioned by Massey, the Commission did not allow much time for groups to organise themselves and conduct research necessary to develop their recommendations on the issue. The Commission announced the public hearings on May 1990 and had originally set the deadline for

²⁶⁷ Christine Massey, "The Public Hearings of the Royal Commission on New Reproductive Technologies, in Gwynne Bassen, Margrit Eichler, and Abby Lippman, eds, *Misconceptions: The Social Construction of Choice and the New Reproductive and Genetic Technologies* (Hull: Voyageur Publishing, 1993): 241.

requests to appear for the end of July 1990.²⁶⁸ This deadline did not give groups enough time to effectively plan and research their written and oral submissions to the Commission.

Early on, many groups protested the Commission's short time lines and poor advertisement of public hearings. For example, during the Commission's first public hearing in Yellowknife, women and aboriginal groups complained that they were not given sufficient time to organise consultations with women in the North. Moreover, the Commission's advertisements of the public hearings did not reflect the linguistic or cultural realities of their communities. For example, a representative of an aboriginal, women's group criticised the Commission for not advertising the hearings in the Aboriginal languages of the North. The Commission's decision to disseminate information through newspapers did not take into account the problem of illiteracy in the North or the established and preferred use of radio or television as the primary means of communication. These issues led several groups to question the relevance and legitimacy of the Commission's public hearings. As one intervener commented:

Not so long ago commissions and committees established by the government didn't come north. We felt ignored as Canadians. Now that the North is included more often, we discover that the government rarely gives us the tools to respond properly. We are caught in a *Catch-22* situation. If we don't participate, it is perceived that we are not interested. If we do, it allows the government to say they have consulted with us on the issues.²⁶⁹

²⁶⁸ This deadline was postponed to a later date due to protests.

²⁶⁹ Brief presented by Brenda Percy on behalf of the Yellowknife Women's Centre, September 12, 1990.

Other groups also complained about the lack of time and resources available to them to effectively participate in the Commission's deliberations. Several participants felt that the Commission's planning schedule and the federal government's unwillingness to allocate research funds to community groups constituted a lack of respect for non-expert knowledge and alternative perspectives. A representative of a religious group described this sentiment when he stated:

But it may be that we too readily took for granted that, to be useful and relevant, debate about NRTs must be scientific and learned. In fact, most families do not live at that level. Are they, the first to be affected by NRTs, therefore to be excluded from the debate? ... Governments are responsible for restoring a balance by allocating research funds equally between those who represent themselves as instruments of progress and those who are trying to evaluate progress.²⁷⁰

The Commission had an opportunity to relieve the financial burdens plaguing volunteer organisations in their efforts to participate in the Commission's work by providing them with research funds. As mentioned earlier, the Berger Inquiry provided intervener funding for community and aboriginal groups to conduct research on the impact of the pipeline on their community. However, unaware of this precedent for intervener funding by royal commissions, the RCNRTs chose not to provide such funding to participants.²⁷¹ This decision left in place the inequities between professional associations and volunteer organisations during the hearings process and thus reinforced

²⁷⁰ Brief presented by Bernard Daly from Action Famille, Knights of Columbus of Canada and the Canadian Conference of Catholic Bishops, February 5, 1991.

²⁷¹ Minutes of the April 23-24 meeting of Commissioners indicate that the issue of intervener funding was discussed but ultimately rejected because 'no precedent exists for royal commissions providing funding to special interest groups to cover their travel costs or preparation of briefs'.

the view that the Commission's primary and most relevant constituency groups were the legal and medical communities.

Another feature of the Berger Inquiry that the RCNRTs did not adopt was the establishment of a different public forum for non-experts or community groups to express and exchange their opinions on reproductive technologies. Groups representing professional associations, such as the Canadian Bar Association and the Medical Research Council participated in the public hearings alongside infertile couples, lesbian and gay rights organisations, and ethno-cultural groups. Commissioners and individuals attending the hearings heard highly technical, specialised briefs from professional associations followed by very personal accounts of women or couples who had undergone infertility treatments in order to have a child. In the same setting, these very different approaches to understanding reproductive technologies and the languages that accompanied them often seemed irreconcilable. While the emotionally charged presentations of infertile couples garnered a great deal of media attention, they did not overshadow the issues raised by legal and medical briefs presented by professional associations. With notable exceptions, the discussions during the public hearings remained quite technical.²⁷² The Commission was not prepared for the wide range of interests and perspectives that would be presented in the public hearings or the communicative strategies different participants would adopt. Apart from the 'armchair' sessions, no specific forum was put in place for infertile individuals and community groups to express their views without the encroachment of highly specialised discussions put forward by professional associations. Vandelac argued that public hearings should

²⁷² Confidential interview with Respondent 1; Interview with Louise Vandelac.

have been organised in settings that were more accessible to individuals directly impacted by these technologies, such as hospitals, and community and health centres. She stated:

Holding public hearings in big hotels, in the mornings, was not really conducive to opening up the debate to ordinary people. The space was intimidating, with Commissioners sitting up front, at a long table, far away from the interveners presenting before us.²⁷³

While the Commission did not consider the inherent differences between professional associations and community groups, it did make a distinction between 'expert' groups and 'advocacy' groups. Presenters from professional associations, like the Canadian Medical Association and the Canadian Bar Association, were regarded as experts in their fields, imparting relevant and objective knowledge on the issue of reproductive technologies. Women's organisations, on the other hand, were regarded as advocacy groups representing particularised interests and value orientations. They were not regarded as 'experts' in women's health and social issues but rather proponents of a particular perspective on reproductive technologies. Moreover, representatives of women's health clinics that offered alternative fertility treatments that were more 'natural' and less invasive were regarded with suspicion and subsequently dismissed, despite their evidence of success. The friction regarding who the experts were was constant, and would remain throughout the hearings process.²⁷⁴

Some of the Commissioners and senior managers questioned the legitimacy of advocacy groups as the representatives of their constituents. For example, Knoppers

²⁷³ Interview with Louise Vandelac. Vandelac argued that the RCNRTs should have followed the example of Le Dain Commission on illegal drug use, which held its hearings in local coffee houses and other settings frequented by drug users.

²⁷⁴ Ibid.

argued that during the public hearings, groups were some times asked whether they had consulted their members and member organisations before coming to the public hearings.

We had people saying that they represented a certain group with over 3000 members. Then we asked how they consulted all these members, it became clear they didn't... We couldn't presume that just because they were the presidents of these groups that they had actually consulted their members in a systemic way.²⁷⁵

Knoppers did recognise that many of these community groups, because of the nature of their work, encountered systemic obstacles, such as time constraints and finite resources that would prevent them from consulting with their members on every policy issue affecting them.

Suzanne Scorsone was critical of what she viewed as the professionalisation of community group activism. She argued that several interveners from women's groups and disability rights groups were not speaking with their own 'voice', but rather were guided by professional staff members working in their organisation:

If you start hearing deconstructionism, or suddenly you're hearing quotes from Engels and you're thinking where did this come from. Well, it's not coming from the person speaking. It's coming from the professionals who are providing their services to the organisation.²⁷⁶

These individuals, she argued were members of a broader professional network whose interests and memberships often overlap. It was therefore important that Commissioners not be "naïve" and accept the representation that was before them at the hearings at face value. While Commissioners were suspicious of community groups and their

²⁷⁵ Interview with Bartha Knoppers.

²⁷⁶ Interview with Suzanne Scorsone.

representatives, they were moved by the “honest integrity” of ordinary citizens, like infertile women, who spoke from their individual experiences with some of the technologies.²⁷⁷

According one former staff member, this attitude was indicative of the general backlash against community and public interest groups during the late 1980s and early 1990s.²⁷⁸ Phillips and Jenson explain how the advocacy and representational components of public interests groups has been delegitimated, both within the state and in the general public. The authors argue that the politics of the neo-conservative agenda redefined basic principles of economic and social citizenship in Canada. Cutbacks in social spending, reductions in group funding, and the elimination of intermediary organisations of representation within the state, contributed to a shift in citizenship regimes, from one based on social justice and equity to one that centres on a “new marketised and individualised citizenship.”²⁷⁹ The authors argue that under this new citizenship regime, the representational role of advocacy groups is suspect. As the authors explain:

²⁷⁷ Interview with Bartha Knoppers.

²⁷⁸ Confidential interview with Respondent 8.

²⁷⁹ Susan Phillips and Jane Jenson, “Regime Shifts: New Citizenship Practices in Canada”, *International Journal of Canadian Studies*, 1996.

Organised public interest groups are delegitimated in the discourse of right wing populism because they are not 'real Canadians.' The first line of attack is on the groups' sources of funding. The second is on the representation and the determination of legitimacy: *Have they proven themselves worthy of the claim that they represent someone?* A common statement is that 'group X doesn't represent me/all women/all Canadians.' Thus, even if a group is self-supporting, it may still be branded a 'special interest.' Failure to represent only some, and not everyone, makes a group 'special' and therefore lacking legitimacy.²⁸⁰

Commissioners shared this sentiment, questioning the representational role of advocacy groups and assigning greater importance to the perspectives of individual interveners during the public hearings as well as the viewpoints of professional associations.

"Testing the Waters": private consultations with professional organisations

As the Final Report was being written and recommendations being clarified, one-on-one consultations were held between Commissioners and individual organisations. The majority of organisations that were invited to speak with Commissioners behind closed doors were professional associations. One-on-one consultations also took place with representatives of pharmaceutical and biotechnology industries. These organisations included the Canadian Bar Association, the Royal College of Physicians and Surgeons of Canada, the Medical Research Council,²⁸¹ the Pharmaceutical Manufacturers Association of Canada, and Ares-Serono Group and Serono Canada Inc. - a manufacturer of fertility drugs. These consultations took place away from the public and in isolation from other stakeholder or expert groups. While representatives of professional associations were

²⁸⁰ Phillips and Jenson, 1996: 27.

given the opportunity to participate in colloquia that dealt with broad societal questions, such as women's issues, and ethical and religious dimensions of reproductive technologies, advocacy groups and experts from other fields were essentially excluded from private consultations between professional associations and the Commissioners.

This asymmetry suggests that the Commission viewed professional associations as the rational and unbiased authority in the area of reproductive technologies. In contrast, social groups were believed to represent 'special interests' and therefore incapable of contributing to a constructive discussion on policy issues.²⁸²

Commissioners also wanted to test the feasibility of potential recommendations with industry groups and professional associations.²⁸³ Interestingly, Canada's co-ordinating institution for the English-Canadian women's movement - the National Action Committee on the Status of Women, (NAC)- was not invited to a private consultation with Commissioners. The only group representing women that partook in a one-on-one private consultation with the Commissioners was the Canadian Advisory Committee on the Status of Women, (CACSW), a semi-autonomous organization within the state that provides advice on matters impacting women in Canada.²⁸⁴ While difficult to substantiate, the exclusion of NAC from the private consultation process may be attributable to its staunch opposition to reproductive technologies and its public criticism

²⁸¹ The Medical Research Council participated in two one-on-one consultations with Commissioners. The last consultation occurred on June 11, 1992 during which the framework of the Commission's final report was being developed.

²⁸² Confidential Interview with Respondent 1; Eichler, 1993.

²⁸³ Interview with Susan Scorsone.

²⁸⁴ Established in 1973, the CACSW was one of the recommendations put forward by the Royal Commission on the Status of Women.

of the Commission's research program and management style. Issues related to this criticism will be discussed later on in the chapter.

The central concern that emerged from the private consultations was the level of government regulation that professional organisations were ready to accept in the area of reproductive technologies. The medical community and pharmaceutical companies were especially resistant to the idea of a government agency dictating research practices and ethical standards. During the one-on-one consultations, several professional associations took the opportunity to inform the Commissioners of the 'positive' changes they had made to their governance system, especially in the area of public accountability. For example, the Commission's consultation with the College of Physicians and Surgeon of Ontario dealt with the changes implemented by the organisation to make it more accountable to the public. The College did not request to appear before the Commission nor did it provide a written submission, because it did not see its activities to be sufficiently related to the mandate of the Commission.

The College, however, felt it was important to inform Commissioners of the medical community's efforts to reform its system of professional self-regulation to ensure greater public safety and public participation. The College itself had recently made changes to its system of governance to allow for greater public accountability, including establishing medical and ethical guidelines for independent health clinics (including IVF clinics) and opening its council meetings and disciplinary hearings to the public.²⁸⁵ The organisation stated:

²⁸⁵ These changes were deemed necessary in order to restore public support for the profession after the 1986 doctors' strikes in Ontario.

The College's overall strategy involves a shift away from traditional *self-regulation* (i.e.: licensing and discipline) to a broader and more responsible concept of *self-governance* and recognises that effective self-governance requires greater public scrutiny and participation.²⁸⁶

The College argued that these changes precluded the need for government legislation on medical research practices and ethical standards, including in the area of reproductive medicine. The exchange between the College and the Commissioners was embedded in a larger discussion of the preservation of self-regulation as the legitimate governance regime of the medical community.

In the same vein, the Commission's private consultations with industry also reflected a desire to protect the interests of pharmaceutical and biotechnology industries, while ensuring some semblance of public accountability. The private consultation held between Commissioners and Ares-Serono Group, a manufacturer of fertility drugs, resembled a public relations strategy session. Chairperson Baird questioned the company's current system of data collection on the health effects and success rates of fertility drugs and treatments. Baird reiterated the public's desire for unbiased and up-to-date data and strongly suggested that it would be in the company's best interest to set up and finance a voluntary data collection system in order to avoid heavy-handed regulation. She stated:

²⁸⁶ College of Physicians and Surgeons of Ontario (CPSO). Transcripts form Consultations, April 24, 1991. Emphasis added.

I think that what we have here is a public need for accountability, a public need for data collection which is seen to be objective and which is trusted by the public because if that is not put in place, I think *we're* in danger of having *Draconian measures* lobbied for, and so I think it is in the public's best interest – I think it is in the profession's best interest.²⁸⁷

This exchange suggests Baird believed that an industry-led initiative in the area of data collection would assuage public demand for accountability and thus prevent future government interference in the pharmaceutical and biotechnology industries.

As mentioned earlier, the general public and other stakeholder groups were not privy to the discussions that took place between Commissioners and industry groups and professional associations. Indeed, these one-on-one consultations were organised after the public hearings were completed in the fall of 1990. Moreover, the majority of these consultations took place as Commission staff was devising the framework for the Final Report. The timing of these private consultations along with the type of discussions that took place suggest that Commissioners were seeking the input and approval of professions and industries directly impacted by the Commission's final recommendations. Many of the discussions emphasised the need to reconcile professional and industry interests with the public's demand for greater government involvement in the area of reproductive technologies.

²⁸⁷ Ares-Serono Group. Transcripts from Consultations, February 19, 1992. Emphasis added.

Separating facts from values: the bureaucratic and intellectual division of research from policy analysis

An important organisational feature of the Royal Commission was its bureaucratic separation of the research work from policy analysis.²⁸⁸ The Policy Analysis Unit was located in the Consultation and Communications branch. The Policy Analysis unit had a number of functions to perform in the Commission's work, including preparing Commissioners for public hearings, conducting environmental scans of existing policy on reproductive technologies, reviewing international reports and analysing what was said during the public hearings and consultations for the Commissioners.²⁸⁹ While the Research Branch was responsible for generating empirical evidence, the Policy Analysis Unit focused on 'non-research' inputs, such as the existing literature and the public hearings.²⁹⁰

There was some discussion when the Commission was first created regarding the rationale for distinguishing research from analysis. Some staff members from both sides questioned how one could conduct research without engaging in analysis.²⁹¹ Some recalled minor tensions among staff members, particularly in the beginning when it was not at all clear what the relationship would be between the two components.²⁹² Early on in the Commission, there was some attempt to bring together members of each unit into small groups in order to facilitate communication and interaction among the different spheres of

²⁸⁸ See Appendix 2 for an organizational chart of the RCNRTs.

²⁸⁹ Confidential interview with Respondent 7, May 31, 2001.

²⁹⁰ Confidential interview with Respondent 2; Confidential interview with Respondent 7.

²⁹¹ Confidential interview with Respondent 1; Confidential interview with Respondent 2; Confidential interview with Respondent 8; Confidential interview with Respondent 7.

²⁹² Confidential Interview with Respondent 1; Confidential Interview with Respondent 2; Confidential interview with Respondent 8; Confidential interview with Respondent 7.

inquiry. Overtime, however, considerations such as limited office space, time constraints, and work tasks, made this option impractical.²⁹³

The Commission's decision to organise research and analysis as different functional specialties was based on the view that the Research Branch's primary task was to produce technical, 'value-neutral' studies that provided scientific evidence without taking a normative position on the issue of reproductive technologies²⁹⁴. The Policy Analysis Unit, on the other hand, would provide Commissioners information on the political and social context of reproductive technologies - essentially, 'non-scientific' or subjective knowledge.²⁹⁵ Policy Analysis was essentially responsible for uncovering 'the bigger picture', and investigating the political, social, and economic elements of the debate as a whole. As one former staff member explained, "The research was always a little bit further away from what drives things at the political level. Policy analysis was that much closer..."²⁹⁶

The bureaucratic separation of research and policy analysis was premised on the view that researchers should not engage in the policy debate on reproductive technologies but rather produce observable, reliable data that would aid Commissioners in developing their recommendations. As one interviewee stated:

²⁹³ Confidential Interview with Respondent 1.

²⁹⁴ Confidential interview with Respondent 8; Confidential interview with Respondent 6; Confidential interview with Respondent 1; Confidential interview with Respondent 2.

²⁹⁵ Confidential interview with Respondent 2

²⁹⁶ Confidential interview with Respondent 7.

The research branch is there to generate empirical information – to gather information and to generate new information. It is not their [the researchers'] role to propose policy. Mind you, in the course of the research, researchers do bring forth policy ideas. One of our tasks was to marshal the feelings of researchers - private researchers but primarily academic researchers. The political work, that is, policy development, lay elsewhere, with the Commissioners.²⁹⁷

Given the bureaucratic and functional distinction between research and policy analysis, there was little lateral communication between the two groups. The Research Branch worked in isolation from the Policy Analysis Unit. As such, there was no mechanism to channel information gathered from the public hearings and consultations to the research staff. Due to the nature of their work, staff members of the Policy Analysis Unit attended several of the public hearings and consultations set up by the Commission and had access to the transcripts.²⁹⁸ Moreover, they received copies of all intervenor submissions or briefings to be used for their analysis of issues raised by community groups and individual citizens. This information, which called attention to the implications of reproductive technologies for different communities and individuals, was not channelled to the research staff. This information could have helped identify gaps in the research and push for more community-based research and qualitative analysis in the Commission's work. However, the division of research and analysis into two separate functional units limited the communication of ideas between the two groups and therefore kept intact the pre-eminence of the medical-scientific orientation of the research projects.

²⁹⁷ Confidential interview with Respondent 4.

²⁹⁸ The majority of the research staff interviewed for this study felt far removed from the consultations and did not attend the public hearings.

“There was no community-based research [on the issue of infertility]. The assumption was that they [community perspectives] were being heard in the public consultations.”²⁹⁹

Equally, employees in the Policy Analysis Unit were not kept apprised of the studies being commissioned by the Research Branch. Analysts were not given access to research findings and some argued that barriers were deliberately set up to minimise the sharing of information between the two groups, especially during the last year of the Commission’s work. A former staff member recalls,

I was doing some analysis on a topic and heard there were some research findings in on it but was told I couldn’t have access it to them. To me this was highly unreasonable... My experience is that generally speaking if you work in the same organisation, and you need to know something you can access it... There wasn’t a lot of sharing of information in the Commission...³⁰⁰

Some staff members felt that a rigid chain of command put in place by upper management and the Chairperson undermined an open flow of communication between organisational units.³⁰¹ Several staff members also felt that upper management controlled vertical communication between themselves and Commissioners. As one former staff member relayed:

²⁹⁹ Confidential interview with Respondent 8.

³⁰⁰ Confidential Interview with Respondent 2.

³⁰¹ This lack of interaction was further exacerbated by the personality conflicts between the Research Director, Sylvia Gold, and Dan Michols, the Director of consultations and hearings. Several former staff members characterised the relationship between the two directors as tense, and thus preventing any collaborative effort in bringing together the findings of research projects with what was being heard during the public hearings.

Nothing would go directly to Commissioners. Staff-Commissioner interaction was not encouraged. If we ran into a Commissioner who wanted something, we had to give the request to the Director then he or she would give it to the Deputy Director. Upper management controlled information that was coming from staff.³⁰²

Senior managers were said to control information they felt did not conform to what the Commissioners wanted to hear. This was especially the case in the last two years of the Commission's work when it was in the process of developing the framework for the Final Report.³⁰³ This conflict is typical of what Cairns views as the tension between academic values and bureaucratic values in a royal commission. While researchers and analysts wanted to engage in an open debate and introduce new areas of inquiry, upper management, including the Commissioners, were more concerned with administrative issues, including respecting hierarchical organisation of authority, the specialisation of duties, and the maximisation of technical and organisational efficiency.³⁰⁴

The bureaucratic distinction between research and policy analysis would make the writing of the Final Report a contested issue within the Commission. There was considerable debate within the Commission concerning which unit would write the Final Report. This decision would have a number of important consequences: First, it determined which staff members would be let go in the final year of the Commission's

³⁰² Confidential interview with Respondent 2.

³⁰³ Confidential interview with Respondent 1; Confidential interview with Respondent 2.

³⁰⁴ Several former staff members argued that operational and management issues, rather than research issues, dominate their agenda. "The sort of questions which took up hours of management's time was who can fly first class, who could have free French lessons, and who was eligible to claim over-time." Former staff member quoted in Eichler, 1993.

work. Second, it impacted how the research was going to be used and interpreted in the Final Report. As one former staff member stated:

There is always going to be tension about communicating your messages and the research that supports that message. And there is going to be disagreement in terms of who does the research, what the research says, and then how you interpret.³⁰⁵

Chairperson Baird and Executive Director, John Sinclair, decided to assign the task of writing the Final Report to the Policy Analysis Branch.³⁰⁶ Researchers were asked to produce studies that were value-neutral and objective, devoid of any normative statement on the issue of reproductive technologies. The Policy Analysis Unit, under the firm direction of the Chairperson and the other Commissioners, would then decipher the policy implications of the research for the Final Report.³⁰⁷ Several researchers, especially social scientists, were resentful of relinquishing ownership of their work to the Policy Analysis Unit, fearing that it would not be interpreted in an appropriate manner.³⁰⁸ Towards the end of the Commission's deliberations, when the Final Report was being written, many of the researchers were let go. Some argued that they had been fired because of their critical stance against some of these technologies.³⁰⁹ Others, including the Chairperson, offered a different interpretation of the event. Baird argued that after the studies were submitted and the Commission began writing the Final Report, the need for

³⁰⁵ Confidential interview with Respondent 7.

³⁰⁶ Ibid.

³⁰⁷ This division of tasks was unlike other royal commissions, like the Macdonald Commission, where research coordinators oversaw the writing of the final report.

³⁰⁸ Confidential interview with Respondent 7; Confidential interview with Respondent 2; Confidential interview with Respondent 8; Confidential interview with Respondent 4.

³⁰⁹ One interviewee stated "Bottom-line: They fired the Left"; Confidential Interview with Respondent 1.

in-house researchers declined. As the Commission's activities wound down, so did the size of the staff. Baird argued that maintaining the same number of employees that the Commission had at the beginning of its work would have been an expensive proposition.³¹⁰ According to Baird, ill feelings that arose during this time were a result of certain researchers feeling ownership of the studies and wanting to be involved in the writing of the Report. This exercise, she maintained, was the exclusive domain of Commissioners.³¹¹

Internal conflicts: the governance regime of the RCNRTs

As in earlier commissions, the RCNRTs' mandate required mechanisms to obtain and bring together expertise from a variety of different backgrounds and to elicit the views of ordinary Canadians. The Commission's research program and public hearings were meant to gather both expert and non-expert perspectives on a very complex and multi-faceted issue. However, the real challenge that faces every commission, including the RCNRTs, is how accommodate or represent different perspectives and encourage an open debate on a policy issue. The capacity of commissions to facilitate policy learning and to represent alternative perspectives on issues lies with the Commissioners and the governance regime that informs their daily decision-making activities. As Jenson argues, commissioners can play a crucial role in ensuring an open research agenda and in providing the link between what is heard during the public hearings and the research that is being undertaken by the Commission's staff and contracted researchers.³¹² The model

³¹⁰ Interview with Patricia Baird.

³¹¹ Ibid.

³¹² Jenson, 1994.

of learning adopted by the Commissioners as well as the Commission's governance regime greatly determines the framing of policy issues.

From the beginning, the working relationship between certain Commissioners was tense and conflict-ridden. Four of the original Commissioners – Maureen McTeer, Louise Vandelac, Maurice Hebert and Bruce Hatfield – publicly criticised the technological and scientific bias of the research program as well as what they perceived to be Chairperson Baird's autocratic management style. By the summer of 1990, the conflict between the dissenting Commissioners and the Chair had rapidly escalated. The four dissenting Commissioners began boycotting meetings in protest of the Chair's autocratic management style. After attempts to persuade the Chair to adopt a more democratic style of governance failed, the four Commissioners asked for a meeting with the Clerk of the Privy Council to resolve the impasse. The meeting with the Clerk of the Privy Council took place in August of 1990 without the attendance of the Chair. At issue was the Commission's Order-in-Council, specifically whether decision-making authority rested with the Chair or was to be shared among all seven Commissioners. The dissenting Commissioners argued that Part One of the *Inquiries Act*'s reference to 'commissioners' in the plural meant that all seven Commissioners were required to share decision-making authority over the Commission's work.

Shortly after the meeting, the Prime Minister's Office responded by issuing a second Order-in-Council and bringing on board two new commissioners, Bartha Knoppers, a professor of comparative law at the University of Montreal and Susan McCutcheon, former chairperson of the Women's College Hospital's board of directors. Chairperson Baird personally called Knoppers to break the stalemate, the two having met

while sitting on a Medical Research Council's committee on genetic cell therapy.³¹³ The two new Commissioners helped solidify Baird's leadership by effectively rendering the four dissenting Commissioners a minority group.³¹⁴ Moreover, the language of the second Order-in-Council formally assigned all decision-making authority to the Chair. It essentially "...revoked crucial provisions of the original Order-in-Council and which had the effect of stripping the Commissioners of all of their responsibilities (save for delivering a Final Report) and transferring these responsibilities to the Chairperson exclusively".³¹⁵

Several of the Commissioners went to the press with their complaints regarding Baird's autocratic style and their mistrust of the Commission's research program and public hearings. The Commissioners were quoted in the French language press as having no knowledge of the Commission's total budget or the research projects that were being undertaken.³¹⁶ This led to more friction among the Commissioners. The next day, a number of the Commissioners who were supportive of Baird argued that the interviews with the press constituted a breach of confidentiality, a principle agreed upon at the beginning of the Commission's deliberations. McTeer, Hebert and Vandelac did not view their interviews as a breach of confidentiality but reluctantly agreed to sign pledges of confidentiality regarding future internal matters. However, conflicts over research and management styles continued. In an unprecedented move, the four dissenting Commissioners filed a suit against Baird and the federal government under the *Inquiries*

³¹³ Interview with Bartha Knoppers.

³¹⁴ By adding Knoppers and McCutcheon to the roster, Baird and her four supporters replaced, in numeric terms, the four dissenting Commissioners as the majority group.

³¹⁵ Statement of Claim, Paragraph 23.

³¹⁶ Eichler, 1993.

Act, arguing that the second Order-in-Council constituted a legal violation and therefore should be overturned.

In the statement of claim, the four dissenting Commissioners stated that they had been prevented from participating in any meaningful way in several areas of the Commission's work, including financial decisions, management activities, and the public hearings process. The Commissioners also felt that their expertise was not being used in the Commission's work, thereby undermining the Commission's original commitment to multidisciplinary research. The Commissioners argued that responsibility for these problems lay squarely with Chairperson Baird and her management style:

Over time it became apparent to the plaintiffs [McTeer, Hebert, Hatfield, Vandelac] Commissioners] that all substantive decisions about every aspect of the Commission's work were being made under the authority of one person, namely the Chairperson, Patricia Baird... In fact, the plaintiffs have been progressively distanced and prevented from participating in every important decision concerning the Commission's on-going operations including the nature of the Royal Commission's research, its consultation and communication program and its organisational and financial priorities with the result that any notion of collegiality and multidisciplinary within this Commission has been illusory.³¹⁷

In the end, the Prime Minister's Office responded by firing the dissident Commissioners. This was the first time in the history of royal commissions that commissioners were fired. Vandelac argued that the firing was an attempt to avoid a public scandal, which would

³¹⁷ Statement Of Claim, Federal Court (Trial Division), filed by Martin Hebert, Louise Vandelac, Bruce Hatfield and Maureen McTeer (Plaintiffs) against Her Majesty the Queen In Right of Canada, The Attorney General of Canada, and Patricia Baird (Defendants). December 6, 1991.

undermine the legitimacy of the Commission.³¹⁸ Others, however, argued that the Prime Minister's Office had no choice but to fire the four Commissioners given that they launched a lawsuit against the government.³¹⁹

Conflict among Commissioners had a number of different sources. The preceding discussion clearly reveals the existence of disagreements among Commissioners regarding the research program and the issue of governance.³²⁰ Vandelac argued that she and the other three Commissioners were routinely excluded from decisions involving research. She states that from the beginning, the Chair, along with the Executive Director, made decisions without consulting the others. She recalled that in the beginning, Commissioners seemed open to many of her suggestions due to her expertise in the field and encouraged her to invite experts from abroad to help devise the research program. However, she claimed that while Commissioners were still debating the research agenda's terms of reference, the Chair had secretly gone ahead and established a research program and assigned it to the research staff. "They were playing with us", she stated.

The four dissenting Commissioners also contested other decisions regarding the research program. Vandelac argues that the four were not consulted about the appointment of Sylvia Gold as the Commission's research director. The group was never shown the 'short list' of candidates for this very important staff position. Gold was recruited by a headhunting firm and approved by the Chair and the Executive Director. As one Commissioner explained to the press:

³¹⁸ Interview with Louise Vandelac.

³¹⁹ Confidential Interview with Respondent 4.

Gold was appointed as a *fait accompli*, as indeed was everything that first year, including research proposals. We always learned about things after the fact, or from outsiders, or when it was too late to influence or change anything.³²¹

The choice of Gold was also criticised, both inside and outside the Commission, because of her perceived lack of background in social science research and in the area of reproductive technologies. This complaint was levelled against several members of the Commission's research staff by leading academics in the field. For example, an expert on surrogacy who had been approached by a member of the research staff was dismayed that the individual had little knowledge of the historical and legal development of surrogate parenthood. "This person knew absolutely nothing about the area, hadn't a clue. She'd never even heard of Noel Keene (the American lawyer who pioneered surrogacy contracts). If that was typical, then they're in deep trouble."³²²

Another concern was the Commission's refusal to make public the names of researchers hired by the Commission and the type of projects being undertaken. The four dissenting Commissioners repeatedly complained that they were constantly being excluded from the research work of the Commission, being denied any information on the research projects or on the way the research budget was being spent.³²³ Several Commissioners submitted research ideas and requests that were subsequently neglected or rejected without any explanation. Moreover, their complaints regarding management issues were also ignored. An example of this exclusion was the public opinion poll carried out by the Commission. As Eichler explains:

³²⁰ The Toronto Star, 1991.

³²¹ Ibid.

³²² Ibid., B7.

The Commission conducted a public opinion poll, which had serious methodological flaws. The Commissioners, pointing this out, received a promise that the poll results were for internal use only, and would not be released to the public. Nonetheless, they discovered through press reports that the results had been released.³²⁴

Scorsone and Knoppers, and the Chair herself felt that she was open to all suggestions and had made an effort to reach a consensus on the research program. However, she argued that certain Commissioners had a sense of ownership of the issue of reproductive technologies and came into the process with preconceived notions about the technologies. Some Commissioners came in with a very clear idea about how the research program was going to be organised and which researchers to enlist. She stated "One group wanted to call the shots. Some Commissioners knew what we should do, who should be brought in as researchers...the rest of us did not want the process hijacked by a particular view." It seemed that both camps feared that the research program was in danger of being dominated by one perspective, the medical model, associated with Baird versus Vandelac's feminist, social deconstructionist perspective.

Another explanation brought forward by some members of the research staff focused on personality conflicts among Commissioners arising from the political process of choosing the Chairperson.³²⁵ Several staff members stated that it was common knowledge that Maureen McTeer, a member of the coalition that had lobbied the federal

³²³ Interview with Louise Vandelac.

³²⁴ Eichler, 1993: 198. This criticism is included in the Statement of Claim filed by the dissenting Commissioners against the Canadian government and Baird on December 6, 1991.

³²⁵ Confidential interview with Respondent 2; Confidential Interview with Respondent 9; Confidential Interview with Respondent 1. Confidential Interview with Respondent 2.

government for an inquiry, had expected to assume the role of Chairperson. Baird's appointment as the head of the Commissioner created resentment and led to a tense working relationship between the two individuals.³²⁶

While recognising management style and the research agenda as contentious issues, others, including former Commissioner Knoppers argued that much of the conflict among Commissioners was a result of the decision of the Privy Council to appoint individuals not on the basis of their expertise but for the constituencies they represented. Problems arose when certain Commissioners could not set aside their personal beliefs and the interests of their constituents while working for the Commission. According to Knoppers, this prevented an open and dynamic dialogue among Commissioners. Some people were named to represent certain constituencies and had very little experience on reproductive technologies.

You can be very active in the feminist movement but have never read a thing on reproductive technologies. People were picked to represent constituency angles, political angles, religious angles. That's a recipe for disaster. Different viewpoints are okay but when you're representing certain constituencies, then you have people you have to answer to. Then you're not free to engage in an open, flexible dialogue.³²⁷

The management style of the Chairperson, her influence of the research program, personality conflicts, and competing interests all contributed to an acrimonious relationship between, on the one hand, the four dissident Commissioners and on the other hand, Baird and her supporters. However, the conflict between Baird and Vandelac,

³²⁶ Confidential interview with Respondent 1; Confidential interview with Respondent 2; Interview with Suzanne Scorsone.

³²⁷ Interview with Bartha Knoppers.

while influenced by these aforementioned factors, was primarily a result of the inability to reconcile their cognitive maps derived from their academic and professional backgrounds. Baird, a physician, strongly adhered to the medical-scientific model while Vandelac sought to deconstruct and critique it. Vandelac wanted to broaden the debate about the role of medicine and scientific knowledge in a society and their implications for certain segments of society. “We have to ask basic questions: What is infertility? What is medicine? What is it for?”³²⁸ She viewed the medical model as intrinsically flawed and in need of examination in the Commission’s work.³²⁹ As one former staff member explained:

She was a Foucault-style deconstructionist. What she would do is cut away, as she perceived it, all the intellectual dishonesty until you get back on solid ground and rebuild. What do you take as givens? What do you take as percepts? I sense that Louise would have had very few precepts and would have opened everything.³³⁰

This deconstructionist project, according to some staff members, was antithetical to Baird’s scientific perspective and trying to blend and operationalise it would have been difficult to accomplish in a time-limited organisation.³³¹

After the firing of the four Commissioners, the Chair’s handling of the Commission continued to be criticised externally. Several researchers working in the

³²⁸ Interview with Lousie Vandelac.

³²⁹ Vandelac argued that the conflict between herself and British born Baird also resulted from different philosophical perspectives that guide Francophone versus Anglophone researchers. “The gap is more between...a European, humanistic conception versus a utilitarian perspective of society, where we all live in a pluralistic society and individual rights reign supreme.”

³³⁰ Confidential Interview with Respondent 4.

³³¹ Confidential interview with Respondent 2; Confidential Interview with Respondent 4.

field of reproductive technologies complained that, as a public institution, the Royal Commission had an obligation to make public the master list of researchers and research proposals in the spirit of contributing to academic knowledge. Moreover, a number of academic and research institutions, including the Social Science Federation of Canada (SSFC) and the Canadian Association of University Teachers, launched official complaints. In March 1992, the SSFC petitioned the Commission for information about its research program, including the awarded contracts, the nature of the peer review process, and ethical and research guidelines established by the Commission.³³² When it failed to receive a reply from the Commission, the SSFC went public and established a task force to examine the Commission's research and the secrecy surrounding it. In June of 1992, the Commission did release some information on the topics under investigation; but this information did not address the SSFC's concerns regarding the scientific integrity of the research.

The fear is that because there are large amounts of money going into questions that admittedly are important for the future of Canadian society, the social science research that's being done may not conform to any number of criteria...³³³

The SSFC then wrote a letter to the Prime Minister asking him to intervene and to compel the Commission to divulge more information about the research projects but again, its requests went unheeded.

According to one Commissioner, the confidentiality of researchers and studies was necessary in order to uphold the integrity of the research program and protect it from

³³² "Researching the Researchers", *University Affairs*, March 1993, No. 34, p. 19.

³³³ Carol Martin, SSFC's government relations officer, quoted in "Researching the Researchers", *University Affairs*, March 1993, No. 34, p. 19.

‘external’, that is, political influences.³³⁴ Scorsone stated that the Commission’s decision not to divulge detailed information about the research projects before the submission of the Final Report was intended to protect the Commission’s independence *vis-à-vis* specialised interests and prevent further politicisation of the Commission’s work:

We were trying to avoid having people lobbying, saying that they think so and so ought to do research or such and such another person is a bad person...and dragging people in the mud. It was so highly politicised. The last thing we wanted to do was drag the researchers themselves into it. It was important that they be able to do rational, good research without having to worry...about people writing the equivalent of ‘poison pen’ letters to them. If that had started happening, a lot of good people would not have worked for us...³³⁵

A former staff member concurred with Scorsone, arguing that many social scientists, in particular feminist researchers, came under heavy pressure from their academic and professional peers for working for the Commission. “This was undermining the work of the Commission and interfering with practical considerations, like writing the Final Report and meeting deadlines. Royal commissions are political organs. And in any political environment, you have to balance transparency with getting your work done. That was the calculus that was made by Patricia Baird.”³³⁶

Moreover, the public disclosure of the Commission’s research before the publication of the Final Report would have limited the Commission’s discretion when it

³³⁴Interview with Suzanne Scorsone.

³³⁵Ibid.

³³⁶Confidential Interview with Respondent 4.

came to the writing of the report and the subsequent acceptance of the final recommendations.³³⁷ As one former staff member explained:

It was possible that the content of the studies may have needed to be massaged to make them more acceptable to the Chair or the Commission in general. In that case, they [Commissioners] wouldn't want the findings to spread in public before they had the opportunity to review the findings³³⁸

The timing of the report as well as the decision to publish the research volumes has important political implications for most policy-advisory commissions. As Cairns explains "Whereas the report will seek to convince the reader of the rightness of its policy recommendations, the separately published research studies may identify roads not taken and weaknesses in the report's intellectual underpinnings."³³⁹ In the end, the Commission postponed the release of the Final Report from July 1993 to November 1993. The research volumes were published at the same time.

Concluding remarks

Like other commissions before it, the RCNRTs organised its work along research activities and public consultations. It established different mechanisms to solicit the views of experts as well as those of the general public. However, the Commission made certain decisions regarding the research program and its overall organisational structure that would significantly impact the representation of different perspectives on the issue of reproductive technologies.

³³⁷ Confidential interview with Respondent 2; Confidential Interview with Respondent 7; Confidential Interview with Respondent 4.

³³⁸ Confidential interview with Respondent 2; Confidential interview with Respondent 7; Confidential interview with Respondent 4.

The appointment of the Commission in 1989 provided an opportunity to expand the boundaries of the debate beyond the scientific-medical realm. Several researchers and activists were optimistic the Commission would encourage multidisciplinary collaboration in its research program. Over time, however, it became clear that different statuses were accorded to different disciplines in the Commission's work. A number of factors contributed to this disciplinary hierarchy in the research program. First, the decision to structure the research program along scientific and technological categories contributed to the privileging of medical-scientific expertise over that of other disciplines. The establishment of four research groups studying the technologies themselves led to the recruitment and privileging of medical-scientific experts as opposed to sociologists, philosophers, or feminists. With few exceptions, the studies produced by the Commission focused on the cost-effectiveness and safety of these technologies rather than an analysis of the current and future impact of these technologies on specific communities and on society as a whole.

Another contributing factor to this disciplinary hierarchy was the adoption of Evidence-Based Research as a guiding principle in the Commission's work. This approach, which has roots in the medical-scientific community, specifies certain methods of collecting and analysing data that are not easily transferable to other disciplines, including the social sciences. Evidence-Based Research sought to generate the 'hard facts' about the various technologies through bio statistical techniques. Therefore, quantitative methods rather than qualitative analysis were the preferred mode of inquiry

³³⁹ Cairns, 1990: 93.

in the Commission's research work. The influence of disciplines that could not meet the rules of evidence set out by evidence-based research was muted.

The disciplinary hierarchy within the Commission was also influenced by the decision to bureaucratically separate research activities from policy analysis. Some researchers, especially those with a social scientific background, questioned the value in distinguishing between these two activities. Others, however, argued that researchers should not participate in policy debates but rather should produce data devoid of any normative or policy stance. The bureaucratic separation of policy analysis and research into two separate functional units meant that researchers would not participate in defining the policy relevance of their own studies when it came time to write the Final Report. The Commissioners, with the help of the Policy Analysis Unit, would be responsible for interpreting the data and their policy implications. This did not sit well with social scientists and feminist researchers who were also concerned with the larger, normative perspective within which empirical analysis is interpreted.

The structure and processes adopted by the Consultation and Communications Branch also helped maintain the pre-eminence of medical-scientific expertise in the debate. In terms of the policy hearings, the Commission did not introduce arrangements or opportunities for individuals and groups to equip themselves with the knowledge and skills necessary to evaluate the issue of reproductive technologies. As mentioned, the Commission did not give sufficient time for community organisations to mobilise and consult their members on the issue. Moreover, the Commission decided against providing intervener funding, a mechanism that could have created a more level playing

field. The lack of time and resources meant that certain sectors or interests were less represented in the public hearings than others.

Community groups and individuals citizens were also not given their own forum to articulate their views about issues surrounding reproductive technologies and to share their experiences. Community groups and infertile women and couples had no recourse but to make their presentations before the Commissioners along with professional associations and scientific experts. For this reason, the technical jargon of scientific and legal expertise at times overshadowed the viewpoints of social groups. Moreover, professional associations and industry groups were afforded one-on-one consultations with the Commissioners because they were viewed as the 'experts', and those most impacted by future government regulation. This led to the privileging of scientific and legal knowledge in the Commission's framing of the issues surrounding reproductive technologies.

The final factor that contributed to the medical-scientific framing of the issue was the management style and governance regime established by the Chair and the Executive Director. Upper management established a rigid chain of command that hindered open communication between functional units and between staff members and Commissioners. Communication among staff members in the research program and in the policy analysis branch was actively discouraged and controlled, as was the channelling of ideas and information between junior staff members and the Commissioners. Arrangements were not put in place to allow for collaboration between individuals across different units, which would have facilitated mutual trust among the different actors involved. The lack of open communication and mutual trust made it difficult to arrive at shared problem

definitions among staff members and among the Commissioners themselves. At the very least, it could have provided opportunities for staff members and the Commissioners to consider or reflect on their own, perhaps narrow, understanding of a particular problem. Instead, the hierarchical nature of the governance regime privileged bureaucratic values of technical and organisational efficiency over an open debate of the issues.

Chapter 6 - Professional Ethics, and Reproductive Choice: The Individual Rights Discourse of the RCNRTs

Introduction

The previous chapter examined some of the formative decisions taken by the Commission in organising the Commission's research agenda and consultations processes. Specifically, it examined how the Commission's research agenda and program, which was structured along medical and scientific categories, reinforced the privileged status of medical and scientific expertise in the area of reproductive technologies. The preceding chapter revealed that the decision to organise the Commission's work along two separate streams of activities – namely research and public hearings – left little room for non-expert knowledge to inform the Commission's research agenda. Moreover, the failure to provide funding to social movement organisations to consult their membership and to develop a deeper understanding of reproductive technologies greatly hampered their ability to fully participate in the process. The participation of these groups was further undermined by the privileged status assigned to professional organisations during the public hearings and during private, one-on-one consultations with Commissioners.

This chapter argues that the 'individual rights' discourse on reproductive technologies was further promulgated by two other factors: the policy legacy of abortion politics, and precepts of contemporary medical ethics. As discussed earlier, the issue of reproductive technologies galvanised into action a number of organisations associated with the issue of abortion. For example, anti-abortion groups have been vocal opponents of embryo research and certain fertility treatments, such as IVF, because of their foetal

rights agenda. Women's groups have traditionally addressed the issue of reproductive technologies within a framework of reproductive choice and individual autonomy, the 'cornerstone' principles that inform their position on abortion.

The precepts of contemporary medical ethics, which leave health-related decisions to the discretion of individual physicians, patients, and involved institutions, also contributed to the framing of the issues in terms of individual autonomy and private choice in the area of health care. Finally, the depiction of fertility and disability as diseases amenable to medical treatments further validated the professional authority of the medical community in the policy area of reproductive technologies and shifted the debate to issues of funding and accessibility. While certain groups raised troublesome questions regarding the detrimental impact of these technologies upon certain societal groups (including the disabled, aboriginal communities, and women in general) the majority of participants appealed to a liberal, client-centred model of high-technology medicine, with individuals identified primarily as consumers exercising their reproductive choices.

This chapter relies almost exclusively upon transcripts of public hearings, submissions and briefing reports of interveners, and internal documents and memos produced by Commissioners and Commission staff. The discussion in this chapter is also informed by two interviews conducted with representatives of organisations that participated in the public hearings, as well as interviews with former staff members. After reviewing a list of approximately 250 submissions, transcripts of proceedings and internal documents stored at the National Archives of Canada, I generated broad categories of sectors or stakeholder groups that either appeared before the Commissioners

during the public hearings or sent written submissions. These categories of stakeholders are as follows:

- Medical community
- Women's groups
- Religious and pro-life organisations
- Public health organisations
- Ethno-cultural groups
- Legal community
- Disability-rights organisations
- Infertility/consumer-rights groups³⁴⁰

After having constructed the categories of interveners, I then proceeded to take a sample of five or six briefs or excerpts from the public hearings transcripts that captured the positions of each intervener group. The sample size was larger for women's groups given that the literature revealed divergent views within this sector.³⁴¹ The analysis of the data served three functions, as follows:

- It described the views of the various stakeholders *vis-à-vis* reproductive technologies and identified the interconnections or dissimilarities among them as well as within each sector.
- It examined the underlying principles informing these viewpoints, such as individual autonomy and equality, and identified how they challenged or supported the dominant medical-scientific perspective.

³⁴⁰ While individual citizens also presented briefings during the public hearings, I decided to exclude them given that their positions were represented by one or several of the stakeholder groups listed above.

³⁴¹ While the Commission held nation-wide hearings, the presentations of interveners from the same sector did not vary significantly. Local or provincial chapters of the same organisation would present similar viewpoints on the issue.

- It provided data needed to systematically trace how and to what extent these viewpoints impacted the medical-scientific framing of reproductive technologies and ultimately the Commission's Final Report.

The goal of this analysis is to uncover the central themes that emerged during the Commission's hearings to reveal how several positions taken by certain community groups stakeholder groups, in particular women's groups, were compatible with the medical -scientific framing of reproductive technologies.

Women's groups, abortion politics and the language of individual rights

Early on in the Commission's hearings, the 'reproductive technologies – abortion' nexus dominated the briefs of the majority of women's groups appearing before the Commission. The themes and concepts of the pro-choice movement made its way into the debate on reproductive technologies. Proponents of fertility treatments and embryo research articulated arguments rooted in the traditional discourse of abortion politics. The abortion issue emerged as a political issue in most industrialised countries as a result of feminist activism and politics during the 1960s and 1970s. The demands for women's reproductive rights and access to abortion were part-and-parcel of the liberal feminist struggle for equal rights in political and legal institutions. Feminist demands for the legalisation of abortion, which changed traditional notions of family, motherhood and female identity, centred on the themes of individual choice, privacy as autonomy, and bodily integrity. As Cohen argues:

The theme of choice and the demand for 'control over our bodies' expressed more than a desire for equal rights. They symbolised a demand for autonomy regarding self-formative processes, for self-determination, and for bodily integrity; in short, for the right for women to decide for themselves who they want to be including whether and when they choose to become mothers.³⁴²

The positions taken by several women's groups on the issue of reproductive technologies during the public hearings were inextricably linked to the ongoing debate on abortion in Canada. In 1988, the Supreme Court of Canada struck down Canada's abortion law on the basis that it violated women's right to 'life, liberty and security of the person' in the Charter of Rights and Freedoms. However, by 1989, a number of events were challenging access to abortion. At the provincial level, injunctions were successfully granted to former boyfriends trying to prevent their partner's abortion. In May 1990, the Mulroney government introduced and passed Bill C-43 in the House of Commons, which would recriminalise abortion.³⁴³

These political events provided the backdrop for many women's groups participating in the public hearings. Abortion-rights activists expressed concern that a ban on both embryo research and IVF may undermine women's right to abortion. As chapter four revealed, *in vitro* fertilisation has been a long-standing point of contention for anti-abortion organisations because of the 'selective termination' of unwanted embryos. The anti-abortion movement saw the Commission's hearings as a forum for

³⁴² Jean L. Cohen, "Critical Social Theory and Feminist Critiques: The Debate with Jurgen Habermas", in Johanna Meehan, ed., *Feminists Read Habermas: Gendering the Subject of Discourse* (New York: Routledge, 1995): 80.

³⁴³ Janine Brodie, Shelly Gavigan and Jane Jenson. *The Politics of Abortion* (Toronto, Oxford University Press. 1992). Bill C-43 was defeated by the Senate on January 31, 1991.

reintroducing the issue of foetal rights onto the public and institutional agendas. For example, the Toronto chapter of Campaign Life Coalition took an 'embryo-centred opposition to NRTs', arguing for the legal protection of the 'preborn child' in its embryonic and foetal stages.³⁴⁴ The group also appealed to economic and social concerns in their call for a ban on *in vitro* fertilisation, citing the low success rates and high costs of these treatments, and its negative impact on women's health. Moreover, the group called for a ban on all genetic screening and all embryo and foetal research. They declared that the former was only acceptable "when there is prenatal treatment available to treat the child. It is never acceptable to cure the disability by killing the victim."³⁴⁵

The majority of pro-choice groups came out in favour of reproductive technologies albeit with reservations. As members of a single-issue movement, these groups advanced a position on reproductive technologies that reflected and was consistent with the abortion rights agenda. Indeed, the most notable figure in the abortion rights movement in Canada, Henry Morgentaler, went before the Commission in November of 1990 and argued that recommendations on reproductive technologies should "protect and respect the individual's rights...and the maximum freedom of persons to make responsible choices compatible with the common good."³⁴⁶ While the majority of the groups expressed their concern over the increased medicalisation of pregnancy and childbirth, and the lack of research on the risks posed by these treatments, they sided with the principle that individuals must be able to exercise choice in matters of reproduction. Women and couples, therefore, should have access to fertility treatments

³⁴⁴ Campaign Life Coalition, Public Hearings Transcripts, Toronto, November 1990.

³⁴⁵ Ibid.

³⁴⁶ Henry Morgentaler, Public Hearings Transcripts, Toronto, Ontario, 1990.

and prenatal screening after having attained informed consent. As the Canadian Abortion Rights Action League (CARAL) stated,

We are also of the view that the less restriction or prohibition of technology in this area, the better. Education is a better solution than coercion. In any of these discussions, it is fundamental to assert that we trust women to make good, moral and conscientious decisions.³⁴⁷

A number of organisations did not speak directly to the issue of reproductive technologies but, rather, they limited their discussion to the legal status of women in Canadian society *vis-à-vis* abortion. For example, the Calgary Association of Women and the Law used the Commission's hearings to raise public awareness of growing judicial intervention on the lives of pregnant women. The group felt compelled to make a statement on this issue because of the Law Reform Commission's recommendations proposing crimes against the foetus. In this context, the Calgary Association of Women and the Law reaffirmed the principle of individual choice in the area of women's reproductive rights. "What we need is a simple principle that affirms the rights of women to make their own choices – good or bad."³⁴⁸

Several feminist groups openly discussed the challenges they faced in devising and articulating a position on the issue of reproductive technologies. While several groups subscribed to the belief that reproductive technologies contributed to the over-medicalisation of women's bodies, they nonetheless could not abandon the principle of individual choice in their recommendations to the Commission. For example, the Groupe de recherche multi-disciplinaire féministe (GREMF) argued that while reproductive

³⁴⁷ The Canadian Abortion Rights Action League (CARAL), Public Hearings Transcripts, October 17, 1990.

technologies help perpetuate sexism in society by reinforcing women's primary status as mothers, a woman must be allowed to access to fertility treatments after she has been given all pertinent information.³⁴⁹ The Canadian Research Institute for the Advancement of Women's (CRIA-W) stance on reproductive technologies was also informed by the principle of individual choice despite the possible harmful effects of certain fertility treatments, specifically *in vitro* fertilisation. The group stated:

Even if we believe and subscribe to the view that motherhood is socially constructed and even if we believe that women's bodies are threatened by new reproductive technologies, we recognise also that it's up to individual women to exercise their proper choice and no one can talk in a theoretical fashion in the name of all women like they are a homogenous and monolithic group.³⁵⁰

The moderate, pro-reproductive technologies stance of women's groups was also a function of institutional and procedural features unique to social movement organisations. For example, the moderate stance of the NCWC (National Council of Women of Canada) can be traced to the diversity of its membership and the mechanisms it uses to consult its member groups. During the hearings, the group argued that reproductive technologies, when properly monitored to comply with safety and ethical standards, enhanced women's autonomy and increased their reproductive options.³⁵¹ NCWC's moderate, liberal stance on reproductive technologies was tied to its organisational structure and membership.

³⁴⁸ Calgary Association of Women and the Law, September 14, 1990.

³⁴⁹ Groupe de recherche mutli-disciplinaire féministe (GREMF), Public Hearings Transcripts, Quebec City, September 26, 1990. The group is a multidisciplinary organization comprised of academic feminists conducting research on women's issues.

³⁵⁰ Canadian Research Institute for the Advancement of Women, Public Hearings Transcripts, Halifax, Nova Scotia, October 17, 1990.

³⁵¹ The organisation recommended the establishment of a national council on bio-ethics for the constant study and evaluation of biotechnological advances in order to develop national standards and guidelines for researchers and practitioners involved in this area.

The group's roster includes a wide array of organisations whose values are often times incompatible. For example, NCWC's members include both pro-life organisations and abortion-rights groups, such as Planned Parenthood Federation of Canada and the Canadian Abortion Rights Action League. Due to the diversity of its members' perspectives, the NCWC's position on reproductive technologies cannot be fundamentally a feminist one.³⁵² Instead, their general concern was protecting the interests of children resulting from fertility treatments rather than the need to transform gender relations.

NCWC's consultation processes also reinforced a liberal stance on reproductive technologies. The brief presented to Commissioners was derived from a questionnaire survey of the organisation's grass-roots members. The practice of consulting member groups for the development of policy resolutions is typical of many Canadian social movement organisations.³⁵³ Once the survey results found their way into the NCWC's policy-formulation process, the influence of groups, who were polarised on issues like surrogacy, became considerably diluted. "Within our broad base, we had groups that were very opposed or very supportive of certain issues. The survey method allowed these groups to cancel each other out."³⁵⁴ The organisation's 'middle-of-the-road' recommendations on reproductive technologies therefore reflected the opinions of its more ideologically moderate members.

³⁵² Interview with Linda Newton, staff member of NCWC, November 1995.

³⁵³ Susan Phillips, "Meaning and Structure in Social Movements: Mapping the Network of National Canadian Women's Organisations," *Canadian Journal of Political Science*, XXIV, 4 (December) 1991, pp. 755-82.

³⁵⁴ Interview with Linda Newton, staff member of NCWC, November 1995.

Gay- and lesbian- advocacy groups articulated an 'individual rights' perspective on reproductive technologies. Lesbian feminist groups were in favor of reproductive technologies, claiming the federal government ought to ensure equal access to treatments regardless of marital status or sexual orientation. Their arguments reflected a common radical -feminist belief that reproductive technologies are vehicles for women's emancipation from a biologically determined oppression. According to radical-feminist supporters of reproductive technologies, lesbian and single, heterosexual women alike, wishing to have children, have only one recourse and that is through science. As such, reproductive technologies represent a Utopian promise to solving : "...the problem central to radical feminist theory of how to guarantee the continuation of the species without needing men.³⁵⁵

This position also appealed to the notion of 'family values' arguing that NRTs could permit people not in traditional heterosexual relationships the opportunity to be parents. These technologies would "promote family life by extending the joys of parenting to infertile or homosexual couples and single people".³⁵⁶ The briefs presented by lesbian and gay rights organisations centred on issues of access to reproductive technologies and legal rights protecting their reproductive choices. A major problem confronting lesbians and gays seeking fertility treatments was the discriminatory elements of existing clinic regulations that determine an individual's or couple's suitability for parenthood. Fertility clinics often utilise selection criteria that inevitably

³⁵⁵ Hilary Rose, "Victorian Values in the Test-Tube: the Politics of Reproductive Science and Technology" in Michelle Stanworth, ed., *Reproductive Technologies: Gender, Motherhood, and Medicine* (Minneapolis: University of Minnesota Press, 1987): 152.

favours heterosexual couples in a stable (i.e.: married) relationship. The brief presented by the Halifax Lesbian Committee on Reproductive Technologies – a lesbian-rights organisation - challenged the prevailing social understanding of the notion of a ‘stable relationship’ and its marginalisation of alternative family arrangements. Appealing to the Canadian Charter of Rights and Freedoms and human rights laws, lesbian rights organisations called for an end to discriminating criteria that prevent lesbians and gays from gaining access to fertility treatments. The group stated, “Single women, whether they are heterosexual or lesbian, find themselves denied access to fertility treatment and to artificial insemination. We are here to suggest that it is critical that these technologies not be limited to a select population. We believe that access to AI should not be influenced by race, class, physical disability, marital status or sexual orientation.”³⁵⁷

Ethno-cultural groups as well as feminist organisations were also instrumental in imparting knowledge on the unique implications of reproductive technologies for their communities. For example, reproductive technologies have been advanced as methods of sex determination and sex pre-selection in several communities where there exist strong cultural biases against females.³⁵⁸ These technologies were said to perpetuate the patriarchal bias that devalues female children in favour of male children. Another concern raised by ethno-cultural women’s groups was immigrant women’s access to information on reproductive treatments. They argued that language and cultural barriers

³⁵⁶ This family values position contrasts sharply with the family values position of conservative groups who argue that the sanctity and stability of the family unit are endangered rather than enhanced by reproductive technologies.

³⁵⁷ Halifax Lesbian Committee on New Reproductive Technologies, Public Hearings Transcripts, Halifax, Nova Scotia, October 17, 1990.

³⁵⁸ Moira Farr, “Dangerous Determination”, *This Magazine*, Vol.24, No.7, (March/April 1991), 10-15.

enhanced the potential for immigrant women to be exploited by reproductive technologies.

Informed choice, access to information, and greater representation of underprivileged groups in decision-making processes were the over-riding themes of this discourse on reproductive technologies.³⁵⁹ While recognising the social and physical dangers posed by reproductive technologies for their communities, these groups did not call for a moratorium. Rather they advocated greater control or regulation of the medical and scientific professions by underprivileged groups. Increased regulation would ensure that the benefits of reproductive technologies for society outweigh their potential dangers.

Infertility as 'disease' and the 'right to consume': the medical discourse on reproductive technologies

The 'consumer rights' discourse on reproductive technologies was advanced by the majority of medical groups, especially practitioners working in the field of reproductive medicine. Within this medical discourse, technologies, like *in vitro* fertilisation and prenatal diagnostic techniques, are depicted as value-neutral, objective medical procedures designed to enhance a couple's reproductive choices. In this market model of high technology medicine, individuals are regarded as consumers exercising their right to 'shop around' among available technologies and providers. Moreover, decisions surrounding reproduction, and by extension, infertility, are considered a private and personal matter, best left to the discretion of the individual patients and their

³⁵⁹ Brief to the Royal Commission on New Reproductive Technologies from the Immigrant Women of Saskatchewan Organisation (1990).

physicians. At the core of this liberal, medical model, is the transformation of involuntary childlessness to the medical disease of 'infertility.'³⁶⁰

During the Commission's public hearings, the majority of medical organisations, with the notable exception of physicians aligned with anti-abortion groups, defined infertility as a reproductive disease amenable to medical treatment. These groups claimed infertility should be both regarded and treated as any other medical condition covered by the Canada Health Act. However, while the notion of reproductive choice was supported in principle by most medical professional organisations, there was a lack of consensus on a number of issues, including the extent to which procreation is an inherent and socially guaranteed right. Two distinct positions emerged within the medical discourse on the rights of individuals to procreate and the state's obligation in safeguarding or indeed enhancing reproductive choices. The medical community was largely divided between fertility specialists, who depicted biological parenthood as an inherent right, and broad-based professional organisations that stressed the need to balance equal access to fertility treatments against current fiscal constraints in health care. The theme of fiscal restraint coupled with the demand for equal access to fertility treatments within the medical discourse favoured a two-tier, public-private mixed system for fertility treatments.

This stance was reiterated numerous times by several professional organisations. The largest medical organisation that favoured equal access to reproductive treatments

³⁶⁰ Farquhar argues that the transformation of childlessness to infertility has legitimised the development and application of highly invasive technological treatments. She states, "The universalising reduction of all involuntary childlessness to infertility vindicates one model of intervention: expensive, high-tech medical treatment." Dion Farquhar, *The*

was the Canadian Medical Association (CMA). As the primary voice of organised medicine in Canada, the CMA was an important and frequent participant in the Commission's hearings across the country. The Association argued that biological parenthood is a 'socially' guaranteed right and that infertility should be considered a health problem. However, the CMA argued that this right is not an inherent one but rather it is subject to certain conditions, including the availability of financial and human resources. Moreover, while the Association argued that fertility treatments should be made available to all members of society in an equitable fashion, it established a medical criterion for determining whether or not the services would be privately or publicly funded. It stated that "...access to publicly funded assisted reproduction services be only on the condition that it is a health service and not a matter of private choice.³⁶¹

Essentially, the CMA advocated a two-tier system in the area of reproductive health services in which only individuals with a 'medical condition' can gain access to publicly funded services. Consequently, individuals who are childless for social rather than medical reasons, such as single women and lesbian or gay couples, can only make use of private fertility clinics at their own expense. Ultimately, the Association advanced an interpretation of equality that was based on rectifying physical or biological impairments to fertility rather than the childlessness caused by social or economic conditions. As the CMA explained:

Other Machine: Discourse and Reproductive Technologies (New York: Routledge, 1996): 82.

³⁶¹ The Canadian Medical Association, Brief to the Royal Commission on New Reproductive Technologies, November 1, 1990.

Access to socially funded programs of assisted reproduction should be determined solely by equitable criteria that find their basis in health reasons rooted in the health status of the individual; and that socially funded access should not become an instrument of furthering economic plans or privately held values but should be in keeping with the rationale underlying access to existing health care services.³⁶²

While the CMA advocated public funding of fertility treatments on the basis of medical reasons, several public health organisations ruled out any coverage of reproductive technologies within the public health care system. This stance was not based on any moral or ethical objections against fertility treatments. Rather, it was based on their perceived cost-ineffectiveness, an important consideration given the political environment of fiscal constraints and cutbacks in health care. Organisations like Calgary Health Services appealed to the utilitarian principle of ‘the greatest good for the greatest numbers’, arguing that given competing demands for limited resources, money in health care should be allocated to those areas that have a greater impact on a greater number of people. Describing its position as a ‘public health’ perspective rather than an ‘individual health’ perspective, the Calgary Health Services contended that more money should be spent on the prevention of both infertility and unwanted pregnancies, and in aiding low-income women delivering disproportionately low-weight babies.³⁶³ When asked by Commissioner McTeer whether or not individuals had a legal right to have a child regardless of cost, the group responded that “...if the right exists, then surely there exists a similar right in terms of people who are pregnant to expect an optimal outcome for that pregnancy”.³⁶⁴

³⁶² Ibid.

³⁶³ Calgary Health Services, Public Hearings Transcripts, Calgary, September 14, 1990.

³⁶⁴ Ibid.

Representatives of private fertility clinics also favoured a public/private, two-tier delivery system in the area of reproductive health care. However, while the CMA's position appealed to an equitable criterion based on medical conditions, groups representing private reproductive health care facilities appealed to the market principle of 'freedom of choice'. For example, CARE (Clinical Associates in Reproductive Endocrinology and Medicine) argued that growing concern over public spending has required governments to establish basic priorities in health care services when determining resource allocation. In this framework of resource allocation, reproductive health (specifically fertility treatments) is assigned a low priority. CARE argued that despite the principle of universal accessibility, cut-backs in health care spending, especially in the area of reproductive health care, has created a situation in which individuals are being denied important services due to long waiting periods. Private fertility clinics, they argued, offer a viable alternative to individuals and couples seeking remedies for their fertility problems, and to governments wanting to curtail health care spending. A two-tier system in reproductive health care renders moot the criticism launched by anti-repro-tech groups that funding of fertility treatments takes away resources from the health care needs of less fortunate members of society. As CARE argued:

Continued funding support of NRTs will be discretionary with greater economic responsibility to be borne by those able to pay. If this thesis is correct, it should have little impact on those of the lower socio-economic circumstance by providing a graduated system of payment.³⁶⁵

³⁶⁵ Ibid.

While groups representing private fertility clinics advocated a two-tier delivery system in reproductive care services, representatives of publicly funded fertility clinics were arguing for more funding into fertility treatments, including *in vitro* fertilisation and assisted insemination. In their briefings, representatives claimed infertility should be regarded and treated like any other medical pathology, the treatments for which are publicly funded. As discussed earlier, defining infertility as a disease was a highly contested and political issue during the Commission's deliberations. As an illness or disease, infertility would be regarded as any other medical condition covered by government-funded health care system. Not surprisingly, groups and individuals associated with university or hospital-based fertility clinics defined infertility as a disease and argued for more government funding into possible treatments. Several fertility specialists working in hospital and university facilities complained about the lack of funding for reproductive treatments, not least IVF and AI. For example, a doctor at the Department of Obstetrics and Gynaecology at the University of Alberta discussed the difficulties he encountered in starting up an IVF clinic in Alberta due to the lack of both public and private funding. He took issue with the Alberta Health Care Insurance Commission's decision to fund fertility surgery but not IVF and other reproductive treatments, which it defined as experimental. He complained, as many fertility specialists had done, that lack of funding for these treatments is largely attributable to an unjust association of these treatments to ethical and moral concerns raised by genetic engineering. As the Alberta physician stated,

Listen to patients with fertility problems and provide adequate funding to solve them. This has nothing to do with genetic engineering or the Boys from Brazil. Let us not throw the babies out with the bath water.³⁶⁶

Other groups representing practitioners in the public health care system also appealed to the principle of universal access. For example, CNA (the Canadian Nurses Association) argued that reproductive technologies should be treated like any other component of health care in Canada. The group stated that these technologies,

...should be universally accessible to individuals and families by means accessible to them through their full participation and at a cost that the country can afford; that is, the provision of new reproductive services should fit the principles of primary health care and also principles enunciated in the Canada Health Act.³⁶⁷

An important concern raised by the CNA was the threat to the principle of universal accessibility posed by variations among provinces in health care coverage for fertility treatments. Universal access was also a central theme of Planned Parenthood. While the group called for greater focus on the prevention of infertility and the availability of birth control methods, it ultimately came out in favour of reproductive technologies as long as pertinent information was made available to ensure informed consent. During its presentation, the group referred to users of reproductive technologies as 'consumers', and called for greater accessibility to services, information, and counselling for all consumer groups. "Barriers set up by language, income, geography, physical and medical disability,

³⁶⁶ Dr. David Cumming, Department of Obstetrics and Gynaecology, University of Alberta, Public Hearings Transcripts, Edmonton, September 13, 1990.

³⁶⁷ Canadian Nurses Association, Public Hearings Transcripts, Ottawa, September 18, 1990.

must be eradicated.”³⁶⁸ With regards to the ethical implications of experimental treatments like *in vitro* fertilisation, the group recommended that a ‘consumer watchdog’-type of committee be established to evaluate both the safety and efficacy of different reproductive technologies.

The ‘client-centred’ discourse also informed positions taken by many infertile women and couples that appeared before the Commission. While most of them recognised that several of these treatments were still in the experimental stages, they nonetheless supported an individual’s right, as a consumer, to choose and gain access to treatments recommended by their physicians. Their recommendations to the Commission focused on increased counselling for couples and individuals considering fertility treatments, as well as more accurate and up-to-date information on the health risks and efficacy of treatment options. Finally, while the majority of infertile individuals and couples preferred that governments include fertility treatments under the public health care system in order to ensure equitable access to them, they reconciled themselves to the second best arrangement, that is, the preservation of the two-tier system already in place in most provinces in Canada.

Protecting the turf: professional self-regulation and reproductive technologies

The majority of professional groups and individuals in the reproductive technologies field appealed to an ‘equality of access’ discourse in their defence of fertility treatments, and of genetic and pre-natal screening. While several disability rights groups and feminist groups criticised prenatal and genetic screening as a form of eugenics, organisations representing practitioners in the field depicted them as legitimate

³⁶⁸ Planned Parenthood, Public Hearings Transcripts, Ottawa, September 20, 1990.

health services. For example, the Canadian College of Medical Genetics recommended that "...genetic screening and prenatal diagnostic services should be equally available to all women in Canada, and that they should be recognised as an intrinsic component of material and child health services.³⁶⁹

While the group recognised that prenatal diagnosis raised a number of ethical issues, it argued that codes of conduct developed by appropriate professional bodies would uphold and protect a patient's safety and interests. A similar position was taken by the Atlantic Research Centre for Mental Retardation, a group specialising in genetic counselling. The organisation argued that genetic testing should be made available to couples and families upon request and in accordance with accepted professional guidelines. It stated that reproductive technologies, specifically prenatal diagnostic techniques, were morally neutral and should be evaluated on an individual basis. "It is important to remember that in this area there are no right and wrong decisions, simply those which are deemed best by the individuals most closely involved and within the context of their own specific situation.³⁷⁰ Moreover, the Centre argued that these technologies should be funded by provincial health care systems.

The group strongly opposed any legislation that would prohibit investigative prenatal techniques. Instead, the Centre argued that existing ethical guidelines put in place by national professional bodies such as the Canadian Medical Association and the Royal College of Physicians and Surgeons, were sufficient to safeguard patients from unethical or harmful practices. A major concern of the group was the preservation of

³⁶⁹ The Canadian College of Medical Genetics, Written Submission, May 21, 1991.

medical authority in the area of prenatal testing and genetic services. The group recommended that the Commission recognise "the autonomy of each hospital /health institution and of any collaborative group of physicians, to set their own guidelines."³⁷¹ The group essentially depicted professional self-regulation as the panacea for any potential misuse of reproductive technologies. This stance was reiterated by other private fertility clinics. Several representatives of these clinics argued that government regulation targeting the field of reproductive technologies was discriminatory. The Centre for Assisted Reproduction (CARE) argued that practitioners working in private clinics are already governed by moral and ethical guidelines established by the medical professional bodies, such as the CMA. Therefore, the application of special guidelines for reproductive health care constituted "professional discrimination and witch-hunting."³⁷²

Proponents for professional self-regulation in the area of reproductive technologies were also found among groups representing the legal profession as well as research institutes on legal issues. The Alberta Civil Liberties Research Centre recommended that 'minimum' standards be established to govern the practices of Assisted Insemination and egg donation. These standards would only address the criteria for donor selection, the number of times one donor can be used, genetic screening requirements of donors, and record-keeping practices by physicians and clinics. The research centre argued that these standards should be administered and monitored by the medical profession and relevant professional bodies and should not be made part of

³⁷⁰ Atlantic Research Centre for Mental Retardation, Public Hearings Transcripts, Halifax, October 17, 1990.

³⁷¹ Ibid.

legislation.³⁷³ The group's recommendations against government legislation on reproductive technologies were linked to its strong opposition to state intervention in pregnancy and childbearing.

The recommendations put forward by legal organisations and research institutes also reflected a preoccupation with the legal protection of medical practitioners working in the area of reproductive technologies. For example, the Alberta Branch of the Canadian Bar Association dealt with the question of how to reconcile or balance the interests of patients with those of the health care provider. The group argued that while numerous common-law principles and legislation govern health care providers, their applicability to reproductive technologies is limited. Reproductive technologies raise a number of issues within the area of civil negligence that are not addressed by existing legislation, such as interpretation of 'standard-of-care', and 'duty-of-care'.³⁷⁴ The group argued that guidelines must be established in order to answer questions regarding whether or not the duty and standard of care have been met. Their questions about reproductive technologies included:

Does a doctor-patient relationship exist (and the usual obligations and liabilities) between donor and physician, recipient and physician, recipient's spouse and physician, and between embryo and physician, and between donated semen or ova and physician?³⁷⁵

³⁷² CARE, Public Hearings Transcripts, Toronto, November 19-20, 1990.

³⁷³ Alberta Civil Liberties Research Centre, Brief presented to the Royal Commission on New Reproductive Technologies. Calgary, September 14, 1990.

³⁷⁴ The Alberta Branch of the Canadian Bar Association, Brief presented to the Royal Commission on New Reproductive Technologies, Edmonton, 13, 1990.

³⁷⁵ Ibid.

However, the group, like the majority of legal organisations, argued against government intervention *via* legislation and instead reaffirmed the role of professional authority in devising and enforcing these guidelines in the field of reproductive technologies. “The determination of whether or not the standard of care has been met is usually assisted by expert opinion from experts working in the area in question.”³⁷⁶

Challenges to the individual rights discourse on reproductive technologies

The liberal discourse on reproductive technologies advanced by professional organisations, abortion rights groups, and infertile individuals, appealed to an understanding of equality and individual autonomy that depicted individuals as consumers within a market model of private reproductive choice. As discussed earlier, the principle of procreative liberty derived from abortion politics, coupled with professional demands for self-regulation, contributed to the depiction of reproductive technologies as medically safe and socially acceptable by most participants in the hearings. The pro-reproductive technologies position that emerged during the Commission was also rooted in a strong belief in scientific and technological progress. While expressing some concerns, organisations in this ‘scientific sect’ framed their arguments in terms of women’s reproductive rights, arguing that reproductive technologies enhanced women’s choices and should only be regulated to ensure the safety of reproductive treatments.

While the liberal, medical model dominated discussions during the Commission’s hearings, it did not go unchallenged. Several feminist groups were highly critical of reproductive technologies, arguing that they had detrimental effects on the status and

³⁷⁶ Ibid.

health of women in general. This position, which is embedded in a broader critique of science and medicine, contends that reproductive technologies "...are taking control of reproduction out of our hands and perhaps eventually out of our bodies altogether and placing it in the hands of doctors and scientists.³⁷⁷

Characterising science and the health care system as oppressive and male-dominated institutions, this 'anti-science' feminist stance regards reproductive technologies as a new and dangerous form of male domination. Consequently, these technologies should be banned due to their adverse implications for women. These arguments were based on a different understanding of equality and freedom, which centred on assuring social and economic conditions that would eliminate possibilities for the exploitation of disadvantaged groups including women, the disabled, and cultural minorities. As Diamond and Quinby argue, feminist opposition to reproductive technologies essentially rejects the 'legal rights' discourse that has permeated feminist politics in Canada and renders invisible the diverse experiences and circumstances of women. They write:

³⁷⁷ Judy Rebick, "Is the Issue Choice", in Gwynne Basen, Margit Eichler, and Abby Lippman, eds, *Misconceptions: The Social Construction of Choice and the New Reproductive and Genetic Technologies* (Hull: Voyageur Publishing, 1993): 89. Judy Rebick was the President of NAC from 1990-93.

Given the contemporary political context, legal rights cannot be ignored, but we want to suggest that significant political change does not rest here. Indeed, as we suggested earlier in this essay, the language of rights, which is the one our legal system is derived from, is deeply insufficient. The events of the last decade make it all too clear that any program or stance based on notions of equality and rights that are abstracted from the immediate context of women's lives often falls short of giving women a greater say in their lives and can even bring harm.³⁷⁸

Much of the debate that emerged during the Commission's hearings centred on the implications of reproductive treatments and prenatal diagnostic procedures on the social status of identifiable groups in Canada. Early on in the public hearings, the issue of reproductive technologies reconfigured established, long-term group alliances that have been in place in other policy arenas and made allies of traditional adversaries. The most notable example of a 'strange bedfellows' situation was the alliance between, on the one side, anti-abortion and religious groups, and on the other, several women's organisations, including the National Action Committee on the Status of Women and the Canadian Advisory Council on the Status of Women. The issue of abortion has traditionally divided these two groups. Women's groups have pressed for legal and equal access to abortion services for women while religious groups have opposed abortion on demand and have actively lobbied governments to assign 'personhood' status to the unborn. The issue of reproductive technologies, however, has brought these two groups together, insofar as they both share a pessimistic perspective on the notion of 'scientific' or 'technological' progress. Both groups are highly suspicious of science and technology and argue that they have a detrimental impact on the most vulnerable groups in society.

³⁷⁸ Irene Diamond and Lee Quinby, "American Feminism and the Language of Control" in Irene Diamond and Lee Quinby, eds, *Feminism and Foucault: Reflections on*

For religious and anti-abortion groups, the critique of reproductive technologies is embedded in a larger critique of technological and scientific advancements that they argue reflect human beings' desire to dominate nature and control their worlds. As a representative of a religious group stated during a hearing:

Contrary to a widely held view, however, science and technology do not always result in progress for everyone. One need only think of the disastrous consequence of many new industrial and medical techniques, not only on the environment but on human life and dignity.³⁷⁹

Religious groups argue treatments and procedures, like IVF and prenatal diagnosis, threaten the unborn because of the selective termination of embryos or foetuses resulting from a multiple pregnancy or a diagnosis of a disability. The majority of religious groups that participated in the Commission's hearings argued that reproductive technologies constitute a threat to traditional family values and to the 'dignity' of the unborn. Their position centred on Christian ideals of monogamy and family life, and retains the link between sexuality and reproduction, with women's sexuality being primarily linked with their desire for motherhood and family life.

Feminist groups, like NAC, also assumed an anti-science position *vis-à-vis* reproductive technologies. However, while the opposition of religious groups was based on the preservation of existing social arrangements, like the traditional nuclear family, NAC's stringent stance against reproductive technologies centred on their emancipatory project for women. The positions taken by NAC and CACSW were embedded in a broader critique of modernity and scientific rationality. Reproductive technologies were

Resistance (Boston: Northeastern University Press, 1988).

said to function, "...within the larger medical pattern of claiming medical authority over an expanding sphere of women's personal lives."³⁸⁰ As social movement organisations, these groups (NAC and CACSW) articulate a "...critique of modernity, formulated on a modern rather than romanticised, traditional base, takes the form of a self-reflexive critique of reason and rationality and a suspicion of both state and market institutions. ³⁸¹

The position taken by the CACSW on the issue of reproductive technologies draws heavily from the feminist critique of science that emerged during the second wave of the women's movement. Founded in 1973, the CACSW is a federally funded organisation composed of approximately thirty members appointed by the federal Cabinet.³⁸² Its members represent the regional and cultural diversity of Canada as well as both official languages. The organisation's mandate is "to bring before the government and the public matters of interest and concern to women."³⁸³ CACSW's arguments hinge upon infertility being primarily defined as a social condition rather than a medical problem. While sympathetic to the plight of infertile individuals, the group argued that the need to have children is conditioned by social attitudes, including the stigma attached to being childless in our society. Moreover, CACSW expressed its suspicion of a high-technology and interventionist responses to infertility, arguing that the "...overmedicalisation of pregnancy and childbirth in Canada amply demonstrates the

³⁷⁹ The Pentecostal Assemblies of Canada, Public Hearings Transcripts, Toronto, 19-20, 1990.

³⁸⁰ Susan Sherwin, "Feminist and Medical Ethics: Two Different Approaches to Contextual Ethics", in Helen Holmes and Lauren M. Purdy, eds, *Feminist Perspectives in Medical Ethics* (Indianapolis: Indiana University Press, 1992): 25.

³⁸¹ Phillips, 1992: 257.

³⁸² CACSW, Brief presented to the Royal Commission on New Reproductive Technologies, March 1991.

³⁸³ Ibid., 9.

divergence between women's interests and professional interests in matters of reproductive health."³⁸⁴

The arguments put forward by the group therefore emphasised the empowerment of women, bodily integrity, and informed choice. The organisation argued that these principles have often been ignored in the past, allowing multiple dangers associated with these technologies to go unchecked. These dangers include lack of information on treatment alternatives, impact of ovulation drugs on women's health, and a general failure to distinguish between experimentation and treatment.³⁸⁵

NAC's main policy agenda has been, for the most part, the redefinition of gender relations and the representation of numerous new women's groups, mostly small and local, which emerged during the 1970s to express the interests of specific categories of women.³⁸⁶ Today, its membership reflects this diversity, consisting of over 500 groups, including national organisations, grass-roots and community women's action groups, disabled women's groups, immigrant women's groups, unions and all major political parties. Since its foundation in 1972, NAC's prime objective has been to improve the status of women in Canadian society. Hence, while the NCWC's mandate was to attain the 'common good', NAC's constitution clearly places women at the centre of their policy agenda.

NAC was also highly critical and called for a ban on reproductive technologies. It took on a socialist feminist stance against reproductive technologies, arguing that the

³⁸⁴ Ibid., 10.

³⁸⁵ Ibid., 11.

drive behind new reproductive technologies emanated from the interests of researchers and capitalists profiting from the development of technologies and drugs aimed at women. Therefore, new reproductive technologies could only serve to maintain women's subordinate position in society by expanding opportunities for women's exploitation and oppression, especially poorer women:

NRTs represent the values and priorities of an economically stratified, male-dominated, technocratic science, the same science that has created the basis of much of the environmental destruction our planet now faces. We fear a future that combines Margaret Atwood's *Handmaid's Tale*, where lower class women are employed as the breeders for a more privileged class, and Aldous Huxley's *Brave New World* of manufactured made-to-order- people.³⁸⁷

NAC also argued that reproductive technologies reinforce the notion of women's primary societal role as that of the biological mother. It defined infertility as a social condition rather than a medical one, arguing that the availability of these technologies has increased the social pressure exerted on women who cannot have children of their own. While NAC supported, in theory, the right of women to seek solutions to their fertility problems, reproductive technologies were deemed to be harmful to women in general. While lesbian groups and infertile women were engaging in a discourse of individual rights, NAC's arguments were based on the notion of women's collective rights and interests. As NAC explained:

³⁸⁶ Naomi Black, "The Canadian Women's Movement: The Second Wave" in Sandra Burt, Lorraine Code, and Lindsay Dorney, eds., *Changing Patterns: Women in Canada* (Toronto: McClelland and Stewart, 1992).

³⁸⁷ National Action Committee on the Status of Women, "The New Reproductive Technologies: A Technological Handmaid's Tale". A Brief Presented to the Royal Commission on New Reproductive Technologies, October 1990.

Even if many individual women are willing to put their personal health on the line to achieve pregnancy, as Canada's largest unitary women's organisation, NAC has a special responsibility to argue for women's collective health interests.³⁸⁸

The issues of genetic technologies and prenatal diagnosis dominated the briefs presented by organisations representing the disability rights movement. Many of these groups spoke out against genetic screening of foetal abnormalities, arguing that it perpetuates negative attitudes towards persons with disabilities. Prenatal diagnostic testing coupled with the quest for the perfect, 'normal' baby put pressures on women to abort disabled fetuses. Several groups, including the Canadian Association for Community Living and Canadian Disabilities Rights Council, criticised the Commission for not including in its mandate the disabled as a group particularly affected by reproductive technologies.³⁸⁹ This omission is consistent with the general lack of attention given to the disabled in public policy. As Peters argues "Because disability has not been considered at the drawing board stage of public policy and institutional development, systemic barriers exist from the outset."³⁹⁰

While the medical and scientific communities state that their primary interest in reproductive technologies is the management of infertility, disability rights organisations argued that these technologies have, in the majority of cases, been used not to overcome infertility but rather they have been promoted as a modern form of eugenics. Women

³⁸⁸ Ibid., 15.

³⁸⁹ Canadian Association for Community Living, Public Hearings Transcripts, Winnipeg, October 24, 1990; Canadian Disability Rights Council, Public hearings Transcripts, November 28, 1990.

³⁹⁰ Peters, 1994: 39.

undergoing genetic counselling are routinely told that abortion is the only viable solution to the issue of disability. As one group stated:

The message that it is not only permissible but preferable to abort any foetus that may be born with a clear disability resounds loud and clear from the advice given and the approach adopted by many within the medical community...The primary purpose of prenatal testing is to try to diagnose disabling conditions in advance. The recommended solution to that diagnosis is abortion.³⁹¹

According to disability rights groups, little support is given to women who want to carry their pregnancies to term after an abnormality is detected. These groups advocated a support system be established for women having disabled children, and pressed for the need to change societal values that discriminate against disabled people. Moreover, the groups advocated that women receive unbiased counselling from representatives of disability groups.

Along with disability rights and feminist groups, aboriginal organisations also called for a moratorium on reproductive technologies, arguing that they threaten Aboriginal cultures and traditions surrounding family life. While expressing sympathy for the problems confronting infertile women and couples, aboriginal organisations argued that childlessness in the North was better addressed by custom adoption rather than highly invasive and costly treatments. As one group stated:

³⁹¹Canadian Association for Community Living, Brief presented to the Royal Commission On New Reproductive Technologies, April 30, 1991.

Some women who are indeed infertile...in talking with their own family members and elders [have been told]...children are a gift, then may be your love should be shared in some other way with the extended family. And that's why it's ...so much more common for them to take in the child of a sister or a cousin because there isn't quite the same pressure I feel on them having their own natural child...access to custom adoption is probably a little more free than down south.³⁹²

Aboriginal groups argued that more attention should be directed towards ensuring the availability of basic health services rather than investing in highly invasive technological treatments and procedures.

Concluding remarks

The concepts and language of individual rights and of professional ethics influenced the parameters of the Commission's official debate on reproductive technologies. The themes of individual choice and personal autonomy that emerged during the debate were remnants of the legacy of abortion politics, in particular the 'reproductive rights' arguments advanced by the pro-choice movement. The notion of procreative liberty derived from the abortion right movement greatly influenced the positions taken by several women's groups, and legal organisations. The individual rights discourse was also taken up by organisations representing the medical community whose primary interest were to preserve professional authority and establish their own standards of practice in the area of reproductive technologies.

The cognitive maps of professional organisations and pro-choice women's groups overlapped in their interpretation of the principles of individual autonomy and equality. For example, both groups argued that the current requirement for informed consent in

³⁹² Tawow Society, Public Hearings Transcripts, Yellowknife, September 12, 1990.

medical practice protected women's individual autonomy. Access to information on treatments and options was a key recommendation put forward by these groups, as was equal access to treatments. Medical associations, pro-choice groups and ethno-cultural organisations argued that government should eliminate barriers that impeded access to fertility treatments and prenatal diagnostic services. However, there existed some divergence regarding whether or not these treatments should be made available in the public health care system. For example, members of ethno-cultural communities and infertile women and couples argued fertility treatments should be publicly funded. They argued that the privatisation of reproductive treatments discriminated against those who could not afford to pay for them.

Others, like the Canadian Medical Association, argued that well-defined medical criteria should determine accessibility to publicly funded treatments. Their position on accessibility was tempered by the fiscal environment of cut backs in the health care system. This led most medical organisations to recommend that access to publicly funded fertility treatments be based on medical criteria. A two-tier system became the most frequently recommended arrangement for providing reproductive health care services and treatments. For their part, groups representing lesbians focused their attention on screening practices for parental suitability that discriminate against them. Their briefs focused on removing bias in the screening process and ensuring the protection of their rights under the Charter of Rights and Freedom.³⁹³

Feminist and disability rights organisations interpreted the principles of individual autonomy and equality in a different way. The two principles are interpreted as the

elimination of social and economic conditions that oppress certain segments of society. Feminist groups argued that women's individual autonomy can only be safeguarded through the removal of social pressures, such as motherhood and the abolishment of the medicalisation of reproduction. Disability rights activists made similar arguments, arguing that prenatal diagnosis undermined their moral equality by promoting prejudice against disabled persons. The position taken by religious and anti-abortion groups did not appeal to principles of equality or individual autonomy. Rather, it focused on respect for human life at all stages of development. Their critique of reproductive technologies rested on the disposal of surplus embryos during IVF treatments and non-therapeutic experimentation on embryos and fetuses. Their call for a government ban on reproductive technologies directly conflicted with the pro-choice groups interpretation of individual autonomy.

The two positions – one in favour of reproductive technologies and the other against it – were incommensurable. The anti-science positions taken by groups like NAC and disability rights groups contrasted sharply against the 'individual rights' discourse of pro-choice groups and infertile women. NAC's critique of reproductive technologies centred on women's social identity and collective interests rather than the concrete and immediate situations of individual women. Lesbian and infertile women contested NAC's position which suggested that IVF and related technologies increased social pressure on infertile women to have a biological child. The critical knowledge generated by NAC that was directed towards an emancipatory project for all women, conflicted

³⁹³ Equality for Gays and Lesbians Everywhere (EGALE), Public Hearings Transcripts, Ottawa, September 19, 1990.

with the experiential knowledge of individual women seeking a solution to a personal problem.

The disability perspective on reproductive technologies also came into sharp conflict with the 'individual rights' discourse put forward by most liberal feminist organisations. Early on, disability rights groups and women's organisations took on an adversarial stance against each other during the public hearings. Several women's groups stated that denying women access to genetic counselling and prenatal diagnosis for the detection of abnormality in the foetus constituted an infringement on women's individual autonomy over their bodies. Moreover, any policies and regulations concerning prenatal screening that deny choice would place further demands on women who have been the traditional caregivers of disabled people in society. As one group stated in its brief "...the disability rights struggle does not need to be waged at the expense of women's right to information and choice."³⁹⁴

The two 'camps' also fundamentally disagreed on the appropriate government prescription. As the previous discussion revealed, the medical and legal communities argued that professional associations were the most suitable organisations to monitor and regulate research and practices in reproductive medicine. Several organisations, including the CMA, argued that guidelines issued by professional bodies and local ethics boards provided adequate safeguards against unethical practices. However, other groups supportive of reproductive technologies called for the government to play a greater role in ensuring their safety and accessibility. In contrast, groups like NAC and anti-abortion organisations, greatly criticised professional self-regulation in the scientific and medical

communities, and recommended that government assume a greater role in restricting and in some cases banning, most forms of reproductive technologies.

While this anti-science perspective captured the media's attention during the Commission's deliberations, it did little to shift the debate away from the issues of access and reproductive choice. Ultimately, the criticism launched against reproductive technologies by feminist, religious and disability rights groups could not displace the 'individual rights' discourse that permeated the public hearings.

³⁹⁴ The Canadian Abortion Right Action League (CARAL), Public Hearings Transcripts, Halifax, October 17, 1990.

Chapter 7 - 'Proceed With Care' and the Validation of Reproductive Technologies

Introduction

The Commission's internal deliberations were wrought by conflict over governance and the direction of research. The conflict among the nine original Commissioners was, to a large extent, motivated by two differing ideologies on the issue of reproductive technologies. Commissioner Baird and her supporters regarded reproductive technologies as just an extension of existing medical procedures to be regulated for safety. The dissident Commissioners, including Louise Vandelac and Maureen McTeer, were well known for their opposition to reproductive technologies and their support for a moratorium on these technologies. These ideological differences were also represented among interveners during the Commission's hearings. Professional associations, fertility specialists, abortion-rights groups, and infertility support groups regarded reproductive technologies as a form of health care that individuals had a right to access under the Canada Health Act. Other groups, most notably some feminist groups and religious organisations, argued that these technologies threatened the most vulnerable segments of society.

While the pro-technology position appealed to the principles of 'individual choice' and 'individual autonomy', the positions of religious and feminist groups opposed to these technologies were couched in the language of social justice. The question that remains to be answered is what impact did these different perspectives have on the Commission's final recommendations?

This chapter examines the recommendations outlined in ‘*Proceed With Care*’: *The Final Report of the Royal Commission On New Reproductive Technologies*. The first section examines the Commission’s recommendations on whether reproductive technologies should be offered as insurable services within the Canadian health care system. It argues that the Commission’s decision to treat IVF treatments as experimental research was driven primarily by fiscal pressures within the health care system. The chapter then reviews the Commission’s recommendations on embryo research. The discussion describes how professional interests and the notion of ‘scientific progress’ influenced the Commission’s decision to allow research on embryos despite religious and feminist objections. The chapter then proceeds to examine the Commission’s decisions to treat prenatal diagnostic services and genetic screening as essential and desirable elements in the ‘management of pregnancy’. The recommendations, which were couched in the language of individual rights, primarily focused on the need to uphold the principle of informed consent. The final section of the chapter assesses the regulatory and licensing framework proposed by the Commission to monitor reproductive technologies. The chapter argues that while this regulatory system allows for greater public accountability and participation, it does not undermine the privileged status of expert or professional authority.

Overall, this chapter argues that the Commission’s recommendations were greatly informed by the liberal, pro-technology stance, which characterised individuals as ‘clients’ and defined equality in terms of equal access to reproductive technologies. The Commission’s ‘individual rights’ discourse created and reaffirmed existing opportunities for infertile and lesbian women to become parents. However, the liberal conception of

individual autonomy was tempered by the Commission's opposition to both surrogacy and the commercialisation of embryos.

Reproductive technologies, evidence-based medicine and the health care system

One of the concerns raised by a number of groups during the hearings was whether to include fertility treatments within the boundaries of the health care system. Several groups argued that reproductive technologies should not be offered as a medical treatment through the publicly funded health care system because they would divert funds from more pressing health care needs. For example, Aboriginal communities argued that the funding of expensive fertility treatments constituted an inappropriate allocation of resources given the difficulties they encountered in accessing basic medical services. Feminist groups and public health organisations argued that more funding should be made available for the prevention of infertility rather than the provision of costly technologies to achieve a pregnancy. Several of the exchanges that occurred between Commissioners and interveners during the hearings focused on the issue of funding. The questions posed by several Commissioners concerned the willingness of Canadians to include fertility treatments in the public health care system. The recommendations outlined in the Final Report regarding access to fertility treatments reflected these fiscal concerns. The Final Report made this clear early on when it stated "If new reproductive technologies are to be made available, it will be in the context of a health care system that is already under considerable pressure."³⁹⁵

³⁹⁵ Royal Commission on New Reproductive Technologies, *Proceed with Care: Final Report of the Royal Commission on New Reproductive Technologies*, Volume 1 (Ottawa: Minister of Government Services Canada, 1993), 72.

Cognisant of fiscal pressures on the health care system, the Commissioners adopted the 'evidence-based medicine' approach to assess the cost-effectiveness of fertility treatments, and on this basis, determine whether they should be provided within the health care system. As discussed earlier, 'evidence-based medicine' was regarded as a "rational and equitable way of allocating public health dollars by suggesting which treatments are beneficial to people at what cost to the system and which are ineffective or overly costly given their likely benefits."³⁹⁶ Using this framework, if the effectiveness and associated risks of a medical treatment have not been established, the procedure should be provided only in the context of research.³⁹⁷ The decision to adopt an evidence-based approach to evaluate the technologies within the context of the health care system was influenced by the Commission's research findings, as well as the concerns raised by public health organisations and women's groups regarding the low success rate of a number of fertility treatments.

The evidence-based medicine approach adopted by the Commission influenced a number of recommendations on IVF treatments and Assisted Insemination. The Commission's research found that IVF has only been proven effective in treating infertility due to fallopian tube blockage - the condition the treatment was originally developed to rectify. The Commission's survey of treatment facilities found that IVF services were being used to treat conditions that they were ineffective in treating.³⁹⁸ The

³⁹⁶ Ibid., 72.

³⁹⁷ Ibid., 72-73

³⁹⁸ Ibid., 498-499.

Report stated that this trend “gives rise to risk, uncertainty, misinformation, and unfairness.”³⁹⁹

The Commission’s research also examined the relative cost-effectiveness of IVF from the perspective of the health care system. As discussed in the previous chapters, the success of IVF as an infertility treatment has been difficult to ascertain given the lack of consensus on an appropriate measurement criterion. Fertility clinics have traditionally defined effectiveness or success in terms of the rate of pregnancy rather than actual live births.⁴⁰⁰ This, not surprisingly, discredits the data of fertility clinics, which characterised IVF treatments as highly effective. The Commission conducted a comparative study of, on the one hand, couples undergoing IVF treatments, and on the other hand, couples undergoing other less expensive fertility treatments or no treatments at all. The study found no difference in the rate of live births.⁴⁰¹ Given these research findings, and the criticism launched against IVF by women’s groups and public health organisations, the Commission recommended that IVF be offered as an insured treatment only to women suffering from fallopian tube blockage. IVF treatments that have not been proven effective, such as the creation of embryos for surrogacy arrangements, ‘unexplained infertility’, and the transfer of donor embryos to post-menopausal women, would be

³⁹⁹ Ibid., 499

⁴⁰⁰ Moreover, many of the studies relied solely on statistical data on the number of births following IVF treatment, which is an unreliable measurement of effectiveness given the absence of a control group.

⁴⁰¹ Goeree, R., et al. *Cost-Effectiveness of an In Vitro Fertilisation Program and the Costs of Associated Hospitalisation and Other Fertility Treatments*. In Research Volumes of the Royal Commission on New Reproductive Technologies, 1993. The study found that in 1990 the average cost to society for a live birth following IVF treatments was \$3827.44 compared to \$1345.40 for a live birth following no IVF treatment.

classified as experimental research, and therefore subject to professional research guidelines. As the Commission stated:

It is misleading to patients, and costly to the health care system to offer unproven treatments, except in the context of research studies designed to assess their safety and effectiveness, in which participants are fully informed about its experimental nature before consenting to treatment and have the other protections inherent in medical research involving human subjects.⁴⁰²

The Commission's recommendations also addressed the issue of equal access to fertility treatments. The Commission's review of admission policies of individual IVF clinics found that they varied significantly across the country. Moreover, the Commission's research found treatment facilities often ruled out prospective patients of IVF on the basis of personal biases.⁴⁰³ For example, prospective patients were sometimes refused access to treatment because of 'doubtful parenting ability', or because they were lesbian or unmarried women. The Commission argued discriminatory admission practices went against the Canadian Charter of Rights and Freedom and other provincial and federal human rights legislation. The Commission recommended that access to IVF treatment be based on legitimate medical criteria and that admission policies set up by IVF treatment facilities should not discriminate on the basis of marital status, economic status or sexual orientation.⁴⁰⁴ Medical standards would therefore provide a neutral and objective criterion for determining access to fertility treatments.

⁴⁰² RCNRTs, *Proceed with Care: Final Report*: 499.

⁴⁰³ Stephens, T and J. McLean. *Survey of Canadian Fertility Programs*,. In *Research Volumes of the Royal Commission on New Reproductive Technologies*, 1993.

⁴⁰⁴ RCNRTs, *Proceed with Care: Final Report*: 552-554.

The Commission also came out against a two-tier, mixed private / public system for reproductive treatments. As discussed in the preceding chapter, several groups representing the infertile as well as medical practitioners in the field argued in favor of a two-tier system, arguing it protected a patient's right to choose among different treatment facilities. Representatives of private fertility clinics argued that long waiting periods at hospital and university clinics undermined the principle of universal accessibility enshrined in Canada's health care plan. Furthermore, several medical organisations argued that a two-tier system would alleviate the current cost pressures on the health care system because prospective patients would have to pay for infertility services out of their own pockets.

Despite these arguments, the Commission rejected a two-tier system for a number of reasons. First, the Commission argued that the cost of IVF treatments provided by private fertility clinic was already partly subsidised by provincial health plans. Laboratory and diagnostic services as well as the training of personnel working in these clinics (i.e. nurses and physicians) were already heavily subsidised by the public health care system. The public health system also incurred the long-term costs of providing medical treatment for premature babies, multiple births, chronic disease and low birth weight babies that result from IVF treatment.⁴⁰⁵ As the Commission explained, "...a great deal of the cost of IVF is already being funded by provincial health plans, whether the procedure itself is performed in a public or private setting. The 'private clinics' are never truly outside the public system and can operate only because part of their cost of

⁴⁰⁵ Ibid., 561-562.

doing business is subsidised by these additional payments from the public system.”⁴⁰⁶

The cost-effectiveness argument in favor of a two-tier system was dispelled and ultimately rejected by the Commission.

The Commission also rejected the mixed, public-private system due to concerns about quality control in private clinics and the potential conflict of interest that arises with physician-owned fertility clinics. The Commission cited studies that indicated the cost of care was substantially higher at physician owned private clinics because patients are recommended services that they may not need.⁴⁰⁷ Moreover, a number of private infertility clinics also provide commercial laboratory services to their patients. This, according to the Commission, constituted a conflict of interest and threatened quality control because these facilities did not have to be licensed. Finally, the Commission rejected a two-tier system in reproductive health care because of its adherence to the principle of the non-commercialisation of reproduction. The Commission felt private ownership of fertility clinics would encourage market and consumer values in the area of reproductive health, which would ultimately lead to unequal access to fertility treatments. In a two-tier system, the ability to pay would dictate who would receive treatments and this, according to the Commission, violated the principle of universality in Canada’s health care system. As the report stated:

⁴⁰⁶ Ibid., 562.

⁴⁰⁷ Ibid.

Access to safe and effective procedures should not be determined by ability to pay; having children is too important in people's lives to allow such a situation to persist. If a technique is of benefit, it should be available to Canadians on equitable bases; if it is unproven, then it is in the realm of research and should not be provided as a service, but only in the context of research, with the protections of more stringent standards and informed consent inherent in research. Moreover, if treatment is being provided in the context of research, patients should certainly not be charged for it.⁴⁰⁸

The 'individual choice' perspective of medical associations and infertile couples was tempered by the Commission by its recognition of fiscal constraints in the health care system and its belief in the principle of universal access to medical services. The Commission also challenged the market model of reproductive technologies and its depiction of individuals as consumers by designating IVF as an experimental procedure except in the case of fallopian tube blockage. This fundamentally changed the existing relationship between the IVF facility and individual patient from a provider-consumer transaction to a researcher-subject relationship. This transformation meant that IVF clinics would have to abide by more stringent guidelines and standards set out for medical research by professional associations, like those from the Canadian Medical Association. Moreover, as research subjects, infertile individuals or couples would receive IVF treatment without incurring any costs.

The Commission's stance against a two-tier, public/private system emerged from its opposition to the commercialisation of reproductive health care and its adoption of evidence-based medicine, which found IVF to be ineffective for many of the conditions it is currently treating. The lack of research and data on the long-term impact of IVF on

⁴⁰⁸ Ibid., 563.

women's health and the health of the offspring further solidified their position.

Moreover, unlike Britain and the United States, only a handful of private clinics operate in Canada.⁴⁰⁹ The majority of IVF treatments in Canada are provided by clinics affiliated with teaching hospitals.⁴¹⁰ Given the small number of private clinics operating in Canada, there was little resistance to the Commission's rejection of a two-tier system of IVF treatment.

Upholding professional standards: giving the green light on embryo research

Along with IVF, embryo research was hotly debated issue during the Commission's hearings. The issue of embryo research mobilised the anti-abortion movement to reintroduce the legal status of the embryo on the Commission's agenda. Interveners representing religious organisations and pro-life groups argued that personhood begins at conception. Therefore, embryos should not be used for medical research. This position conflicted with the views of many medical professional and researchers that lauded the scientific merits of embryo research. Professional groups maintained that current professional guidelines on medical research provided sufficient safeguards against unethical practices. Organisations, such as the Medical Research Council of Canada, questioned the need for legislation on embryo research, and argued in favor of the existing voluntary system of professional self-regulation. In the middle of these two extreme positions was the commonly held view that certain restrictions be imposed on embryo research, and that the principle of informed consent be respected. Moreover, different methods for public participation were suggested, ranging from “

⁴⁰⁹ During the Commission's deliberations, only five privately owned fertility clinics operated in Canada, with three located in Southern Ontario.

increased public participation on institutional ethics committees, to a multidisciplinary permanent advisory committee at the federal level, to a voluntary or statutory licensing authority, with public representation.”⁴¹¹

In its final report, the Commission recommended that embryo research be permitted with certain restrictions. While recognising the moral issues surrounding embryo research, the Commission rejected assigning the embryo the same legal protection afforded to children or adults. It argued that embryos did not have personhood status before the law, and therefore were not legally protected against potentially harmful research. The Commission also rejected the argument of ‘potentiality’ advanced by anti-abortion groups, which assigned moral status to the embryo because it is a living entity with the potential of becoming a human being from the point of fertilisation. The Commission argued that the idea of potentiality would be difficult to apply given the lack of consensus on what constitutes fertilisation. Technological advancements in the field of embryology underscore the complexity of the fertilisation process and the development of new life.⁴¹² Consequently, there continues to be a lack of consensus on the point at which human life begins:

People who see fertilisation as a critical landmark for assigning full moral status must decide at what point in the process of fertilisation this ‘personhood’ occurs. Is it the entry of the sperm? pronuclei formation? syngamy? or the ‘turning on’ of the genes?⁴¹³

⁴¹⁰ Ibid., 511.

⁴¹¹ RCNRTs, *Proceed with Care: Final Report*: 611.

⁴¹² These technological advances in embryology revealed that it takes 24 hour after fertilisation has taken place for the chromosomes of the egg and sperm to come together and establish an entirely new genetic identity. Medical researchers have defined this process as “syngamy”, believing it to be the point at which development actually begins.

⁴¹³ RCNRTs, *Proceed with Care: Final Report*: 634.

As discussed earlier, research ethics boards and the guidelines of the Medical Research Council of Canada permitted research on embryos any time before 14 days post-fertilisation. The medical research community has developed a graduated system for characterising an embryo according to its different phases of development, beginning with a zygote, to an embryo, and finally to a foetus. The 14-day mark is considered significant for two reasons: as a point in time when the potential to develop into a human is considered high, and when what has already developed is discernible and deserving of our 'moral respect'. At this stage of development, the embryo is regarded by the research community as having a higher potential to develop into a human being than at any time before.

Ultimately, the Commission sided with the prevailing 14-day cut-off point for embryo research. The Commission rejected both the medical community's and the anti-abortion movement's definitions of human potentiality, arguing that 1) fertilisation does not necessarily lead to a zygote or embryo and 2) gametes themselves have the potential for human life prior to fertilisation. The Commission argued that decisions on embryo research should be based on the embryo's connection to the 'human community' and not on its potential as a human being. Moreover, the 14-day limit, according to the Commission, was considered a "reasonable" compromise among the conflicting perspectives heard during the hearings. As the final report stated:

The 14-day limit, we believe, respects all these forms of connection. It also recognises the legitimate value of medical knowledge and the need to find a morally acceptable compromise in a pluralistic society in which there are various views about the relative importance of different stages of embryo development. People disagree about issues such as the role of potentiality, the importance of individuation, or the value of medical knowledge, and the 14-day limit is a prudent and legitimate compromise among these differing views and interests.⁴¹⁴

The Commission's recommendation of a 14-day limit on embryo research also reflected its desire to be consistent with the guidelines and standards of international organisations and legal and medical associations. The Final Report's discussion on embryo research describes how the Commission's recommendations are consistent with the expert opinions of the Canadian Bar Association and the Medical Research Council. The two organisations regarded the 14-day limit as a 'pragmatic' and 'ethically acceptable' compromise, which "balances the concerns against genetic engineering and in favor of beneficial experimentation."⁴¹⁵ The final report also mentioned that other international committees and inquiries had adopted the 14-day limit in embryo research. According to the Commission, the "widespread acceptance" of this standard within the international community lent legitimacy to its own recommendation. Finally, the decision to adopt the 14-day limit was also influenced by a desire to protect the reputation of Canadian research in the biomedical field in the international community. The Report stated, "...given the current state of knowledge, it is appropriate to agree to a

⁴¹⁴ Ibid., 636.

⁴¹⁵ Ibid.

standard that enjoys broad international support, if only to ensure that research done in Canada will be as respected as that done in the rest of the world.”⁴¹⁶

Other recommendations prohibited certain kinds of embryo research, and addressed the issues of ownership rights and informed consent. The Commission argued that certain kinds of embryo research, including cloning, genetic manipulation, and animal/human hybrid, should be prohibited because they, “...violate basic norms of respect for human life and dignity.”⁴¹⁷ The majority of interveners, including medical associations, agreed with this recommendation. However, there was no consensus on whether embryos should be created for research purposes. As discussed earlier, several anti-abortion groups and women’s organisations were concerned that surplus embryos resulting from IVF treatments were being used for research purposes. While the Commission did recognise that this practice could lead to the “...instrumentalisation of embryos...” it nonetheless recommended in favor of the creation of embryos for research purposes. The Commission decided that it would be too difficult to distinguish between ‘surplus’ embryos derived from IVF treatments and specially created embryos because of the physician’s discretion during IVF treatment. The Commission cited the findings of the Australian Senate Select Committee, which stated:

⁴¹⁶ Law Reform Commission of Canada. *Biomedical Experimentation Involving Human Subjects. Working Paper 61* (Ottawa: Minister of Supply and Services Canada, 1989), quoted in the RCNRTs’ *Proceed with Care: Final Report*: 636.

⁴¹⁷ RCNRTs, *Proceed with Care: Final Report*, 637.

Any intelligent administrator of the IVF program can, by minor changes in his ordinary clinical way of going about things, change the number of embryos that are fertilised. So in practice there would be no purpose at all in enshrining in legislation a difference between surplus and specially created embryos.⁴¹⁸

The Commission concluded it was acceptable for create embryos for research purposes providing a number of conditions are met. These conditions include, obtaining the informed consent of the gamete donors, conducting the research in a licensed research facility, using eggs retrieved during procedures aimed at improving the woman's health, and conducting research that aims to benefit human health and not commercial interests.⁴¹⁹ With regards to the last recommendation, the Commission did not provide any criteria for distinguishing commercial research from research aimed at improving human health. For example, embryo research for the treatment of Alzheimer not only improves the health of patients with the disease but is also a potentially profitable research endeavor for pharmaceutical and biomedical companies. Except for its recommendation prohibiting and criminalising the sale of human eggs, sperm or zygotes, the Commission did not address, in any really depth, the possible connection between commercial interests and embryo research in Canada and around the world.

The section on embryo research also dealt with the issue of funding. The Commission depicted embryo research as an important health priority deserving of public funding. According to the Report, public funding of embryo research is an effective way of ensuring that research projects reflect societal values and adhere to ethical standards.

⁴¹⁸ Australia, Human Embryo Experimentation in Australia, paragraph 3.31., quoted in the RCNRTs, *Proceed with Care: Final Report*: 638.

⁴¹⁹ Ibid.

Moreover, public funding of embryo research contributes to a greater understanding of human reproduction and thus, improves the effectiveness of fertility treatments, like IVF.

⁴²⁰ The Commission recommended that funding decisions on embryo research be made by national ethics committees. The Commission believed that licensing requirements and increased monitoring would provide sufficient safeguards against unethical research projects. It argued, "Since we recommend that all facilities involved in embryo research be licensed by the NRTC, which would monitor research projects done anywhere in the country, we do not believe it is necessary to specify further restrictions in law on the aims of research."⁴²¹ Once again, the Commission sided with professional interests and upheld the use of medical research guidelines, for determining the acceptability of a research project.

However, the Commission did call for a move away from a system of professional self-regulation to a regulatory system characterised by greater public accountability. As discussed earlier, local hospital review boards are solely responsible for deciding on the acceptability of research projects and their decisions are usually made without the public's input. The Commission argued that the lack of federal or provincial laws, and the lack of public participation in the area of embryo research could lead to the funding of unethical research projects. However, despite the Commission's apparent appeal to the principles of public accountability and public participation, its recommendations did little to challenge the medical self-regulation system already in place. First, its notions of public accountability and public participation were extremely limited. For example, the Commission argued that the most essential feature of an open and participatory system

⁴²⁰ Ibid., 643.

was the regular dissemination of 'accurate' information to the public. Moreover, it defined public accountability as the public's 'right to know' what is going on in this area and to be assured that the research complies with social and ethical as well as medical and scientific standards.⁴²² Public accountability did not extend to include the public's active involvement in the decision-making processes of ethics committees and boards. Ultimately, while the Commission recommended a government-led licensing system, it left intact the existing system of local ethics review. As the Report stated:

Such licensing would not replace institutional ethics committees in universities and hospitals. Rather it would serve as an additional and nationally consistent check on the acceptability of research using human zygotes before its commencement... Once the clinic was licensed, it would then seek approval for individual projects from a local institutional ethics review board, which would use guidelines drawn up by the NRTC to assess such proposals.⁴²³

Prenatal diagnosis and genetic technologies: upholding the principle of individual autonomy

Another area of concern the Commission addressed in its Final Report was the issue of prenatal diagnosis (PND) and genetic technologies. The report examined four particular applications of these procedures. They are, prenatal diagnosis for genetic diseases and anomalies; prenatal testing for late-onset disorders; sex-selection; and gene therapy. The Report also examined the effects of these procedures on groups in society, specifically the disabled and women. A number of organisations that participated in the Commission's hearings were concerned by the proliferation and routinisation of prenatal and genetic technologies in pregnancy care and the potential harm they posed for

⁴²¹ Ibid., 642.

⁴²² Ibid., 644.

vulnerable groups and for society in general. Groups representing the disabled were especially critical of prenatal diagnostic techniques aimed at detecting fetal abnormalities, arguing that they devalue persons with disability by encouraging the notion of the 'perfect child.' Several women's groups argued that the current application of PND techniques and practices contributed to the further medicalisation of pregnancy while others drew attention to the difficulties confronting women in Northern and rural communities in accessing basic prenatal diagnostic services. Several interveners representing legal organisations were concerned about the potential misuse of genetic information and the lack of laws or regulations that protect an individual's right to privacy.⁴²⁴

Some of the concerns raised by interveners were addressed in the Commission's research. The Commission produced three volumes of research on prenatal diagnosis, comprising approximately twenty research studies. However, the majority of the studies were primarily concerned with assessing the current practice of prenatal diagnosis in Canada and new research developments in the area. Only a handful of studies on prenatal diagnostic techniques dealt with their impact on specific groups, such as the disabled and women.⁴²⁵ One study was conducted on the effect of prenatal diagnostic services on the social status of the disabled, while two studies assessed the views and experiences of women with these technologies. The research studies on prenatal diagnosis suggests that the Commission was preoccupied with dispelling some of the myths and misconceptions

⁴²³ Ibid., 645.

⁴²⁴ Ibid., 730.

⁴²⁵ The research studies focusing on women and the disabled are: S. Tudiver, *Manitoba Voices: A Qualitative Study of Women's Experiences with Technology in Pregnancy*;

found in the general public about genetic-related medical services and procedures. In the section on prenatal diagnosis, the Final Report states that one of the most 'alarming' and pressing issues facing the Commissioners was the need to educate the public on the current practice of PND and the merits of genetic research. The Report stated:

The Commission's investigation revealed interesting and, in some cases, worrisome data. We found, for example, that researchers and practitioners in these fields have not managed to convey adequate information to the public about what genetic services in Canada do. There was little public awareness and much misunderstanding of the technologies...Misinformation has contributed to the formation of public knowledge and attitudes in this area.⁴²⁶

The Commission blamed not only practitioners and researchers in the field for the inaction, but also mainstream media and scientific journals that have unfairly linked genetic services with animal or human cloning, a procedure that does not enjoy popular support.

The majority of the Commission's recommendations on prenatal diagnosis and genetic services centered on the issue of counselling, informed consent, and the principle of individual autonomy. The Commission depicted genetic counselling as an important and legitimate service within pregnancy care and part of a couple's or a woman's right to information on potential foetal abnormality. While acknowledging the concerns of disability rights groups, the Commission's recommendations ultimately appealed to the principles of free reproductive choice and individual autonomy. It argued that individual women and couples were entitled to access prenatal diagnostic and genetic services, and

K.R. Grant, *Perceptions, Attitudes, and Experiences of Prenatal Diagnosis: A Winnipeg Study of Women Over 35*.

⁴²⁶ RCNRTs, *Proceed with Care: Final Report*: 732.

the concomitant right to refuse services that have become routine practice in pregnancy care. The Commission argued that the use of prenatal diagnosis and genetic services was a private matter, to be determined by the individual women and couples involved. As the Report states, “There is no single “right” answer for all women and couples, only answers that are right for the individual woman or couple, based on personal circumstances and values.”⁴²⁷

Disability rights groups argued that the lack of support or services available to families with disabled children is often the primary reason parents choose to abort a foetus with congenital anomalies and genetic disease. While the Report did not recognise the social and financial pressures that influence a woman’s decision to terminate a pregnancy, the Commission argued that these pressures were not as significant as other considerations. The Report stated:

For many families, lack of support or services is not the primary reason they do not wish to have an affected child. Although there is no question that increased support is necessary in the interests of social justice, this would not provide an acceptable alternative to PND and abortion of affected foetuses for many women and couples. To say that it would neglects the devastating impact of some mental and neurological disabilities, which require lifelong care, often overwhelm the parents’ lives, and inflict suffering on the affected individual and, as a result, on family members and others who witness that suffering.⁴²⁸

The Commission’s discourse on disability focused on the suffering experienced by women and couples with disabled children and the relief provided to them by prenatal diagnostic techniques and genetic counselling. Disability was depicted as a private,

⁴²⁷ Ibid., 785.

⁴²⁸ Ibid., 789.

personal issue affecting couples and families rather than an issue of social justice and social equality. While the Commission did recommend that couples be encouraged to seek additional counselling from persons with disability when deciding whether or not to abort the affected foetus, it did not make it a requirement in the decision-making process. The Commission's primary preoccupation in the area of PND and genetic screening was the quality of counselling given to affected couples and ensuring that requirements for informed consent were met.

Another concern was the issue of unequal access to prenatal diagnostic services. The Commission's studies found that higher income families or women had greater access to these services than lower-income families. The studies also found that women living in rural or northern communities also had difficulty accessing prenatal diagnostic services, and that there was significant regional variations in the use of routine prenatal services, especially ultrasounds.⁴²⁹ Moreover, the Commission expressed its concern over the routinisation of ultrasounds in pregnancy care, especially in non-hospital settings. The Commission argued that the increased use and cost of ultrasound procedures was largely due to the provision of ultrasounds in private, and unlicensed physicians' offices. This arrangement, according to the Commission, leads to conflicts of interest given that physicians ordering the ultrasound service are profiting from it.⁴³⁰ The Commission recommended that provincial and territorial ministries of health, in cooperation with the Society of Obstetricians and Gynaecologists of Canada, the Canadian Association of Radiologists, and the College of Family Physicians of Canada, establish licensing guidelines and standards to eliminate potential conflicts of interests in

⁴²⁹ Ibid., 816.

service delivery and to prevent the use of ultrasounds for sex-selection purposes except where medically indicated. Ultimately, the Final Report's recommendations on prenatal diagnostic services and genetic screening centered on establishing a licensing framework for medical facilities that provide these services, and a process for regularly assessing technological advancements in the area of prenatal diagnosis.

From professional self-regulation to government regulation: the National Reproductive Technologies Commission

The Final Report's most important recommendation was the establishment of a national regulatory agency to review reproductive technologies and the accreditation of research facilities and fertility clinics. Many of the interveners that participated in the Commission's hearings called for greater government regulation in the area of reproductive technologies. Groups representing a wide range of interests and professional backgrounds expressed were concerned about the federal government's lack of involvement in the area of reproductive technologies. They argued that the lack of federal involvement has led to inter-provincial disparities in licensing requirements and practices, as well as variations in the way research into reproductive technologies is carried out. Moreover, the lack of federal legislation in this area meant that society has had to rely on non-governmental, professional bodies and medical associations to set guidelines and standards of practice. For these reasons, the majority of interveners appearing before the Commission supported the idea of a national regulatory body responsible for establishing and enforcing nation-wide standards and principles that are consistent with the values and opinions of Canadians.

⁴³⁰ Ibid., 818.

The calls for a national regulatory body on reproductive technologies and for greater involvement on the part of the federal government posed several challenges for the Commission. As discussed earlier, the provinces have constitutional jurisdiction over health care. However, the federal government can act to protect safety and health. Discussion on the national regulatory commission was dedicated to legitimising, constitutionally, the federal government's jurisdictional power to introduce legislation on reproductive technologies. The Commission argued that the federal government has the authority to intervene in the area of reproductive technologies under its responsibility to legislate for peace, order, and good government in matters of national interest and under the Canadian Criminal Code. For example, under the Criminal Code, the federal government can implement a number of recommendations proposed by the Commission, including legislating against the commercialisation of human reproductive materials and surrogacy arrangements; banning research involving ectogenesis, cloning, the creation of human / animal hybrids; and protecting pregnant women against unwanted medical treatment.⁴³¹ While the federal government can prohibit unsafe medical practices under the Criminal Code, no framework exists for evaluating and monitoring developments and practices that are not prohibited. The Final Report argued that the federal government's responsibility for 'peace, order and good government' gives it the authority to establish a national regulatory agency to evaluate and monitor reproductive technologies and practices across all provinces.

The Final Report also appealed to the cost-effectiveness of a national regulatory framework. The Commission recognised that in recent years, the federal government has

⁴³¹ Ibid., 108.

withdrawn from direct intervention in traditional areas of responsibility and has shied away from establishing regulatory agencies in an effort to control spending. The Commission, however, argued that a piecemeal approach to regulating reproductive technologies would lead to greater expenditures in the health care system. Moreover, given the social significance of reproductive technologies, the Commission argued that inaction in the name of fiscal restraint would not only be 'politically irresponsible' but also economically unsound. As the Report stated:

We recognise that there has been a clear trend, in recent federal policy, away from the commission model as a choice of regulatory instrument, and toward an amalgamation of agency functions and an overall reduction of federal intervention and spending in the interests of cutting federal costs. We consider, however, that the immediate and long-term cost of establishing and funding a National Commission along the model we propose represents a reasonable financial commitment⁴³²

According to the framework outlined in the Final Report, the NCRT (National Commission on Reproductive Technologies) would act like any other regulatory agency, such as the CRTC (Canadian Radio-Television and Telecommunications Commission) and the NTA (National Transportation Agency). The NCRT would perform a number of functions, including licensing and monitoring facilities; setting standards and guidelines; collecting and recording information; inter-provincial consultation and cooperation; and monitoring technological and research developments and practices. The Commission would comprise five sub-committees responsible for licensing the provision of different categories of services. The five areas subject to compulsory licensing are:

- Sperm collection, storage, and distribution, and the provision of assisted insemination services;

⁴³² Ibid., 114.

- Assisted conception services, including egg retrieval and use;
- Prenatal diagnosis;
- Research involving human zygotes (embryo research); and
- The provision of human foetal tissue for research or other specified purposes.⁴³³

The Final Report also recommended that membership of each sub-committee reflect a diversity of professional backgrounds, expertise, and social experiences. The NCRT would comprise both experts and non-experts, with women making up at least half of the members. Members would also have to represent the interests of other underprivileged groups, including ethno-cultural, Aboriginal communities, the disabled, the infertile and the economically disadvantaged. NCRT would also include members who represented other areas of expertise, including ethics, law, and the social sciences.⁴³⁴ Despite the increased openness suggested by the regulatory framework in the Final Report, the NCRT continues to depict reproductive technologies as regular medical procedures or consumer goods. The agency would be responsible for the regular inspection of clinics to ensure compliance with national standards and for ensuring that 'consumers' have accurate and up-to-date information on treatments. This leaves little room for any significant discussion on the social implications of reproductive technologies on specific groups, including women, the disabled, and aboriginal and ethno-cultural communities.

⁴³³ Ibid., xxxiii.

⁴³⁴ Ibid.

The establishment of a regulatory agency also legitimised the view that potential dangers of reproductive technologies can be prevented by establishing standards and by creating mechanisms for public accountability. Ultimately, the recommendations depicted reproductive technologies as an individual and private matter. As the Report stated: “A central goal of our recommendations is to enable individual Canadians to make personal decisions about their involvement with the technologies, confident in the knowledge that mechanisms are in place to assess safety and effectiveness and to consider their ethical, legal and social implications.”⁴³⁵

Concluding remarks

The Commission’s final report, *Proceed With Care*, put forward several recommendations that addressed many of the concerns raised by lesbians, women’s groups and ethno-cultural organisations, regarding informed consent and equal access. For example, the Commission recommended that access to reproductive technologies be based on a medical set of criteria without regard for such factors as marital status, social and economic status, and sexual orientation. This recommendation clearly sided with the ‘individual rights’ discourse of lesbians and single women regarding equal access to treatments. Other ‘pro-women’ recommendations included the involvement of women in the decision-making processes of scientific and medical research, greater access to information on reproductive treatments, and the use of ‘evidence-based medicine’ to evaluate the efficacy and safety of reproductive treatments and guide decisions regarding their funding within the Canadian health care system. In many ways, the Commission’s

⁴³⁵ Ibid., xxxv

recommendations addressed several of the feminist concerns raised during the public hearings. As Weir and Habib state:

The Commission responded to the feminist critique of medicine through proposals that would secure its position both in research science and clinical practice. Medicine was to be reconstructed as non-sexist through a series of recommendations that would fashion the emerging field of reproductive biology as a form of gender-neutral, evidence-based medicine.⁴³⁶

Ironically, evidence-based research, which was criticised by many feminist researchers for favouring quantitative data over qualitative analysis, was effective in redefining IVF from a mainstream medical procedure to an experimental treatment and thus removing it from the publicly funded health care system. The Commission's decision to remove IVF from the health care system for the treatment of unexplained or social infertility was the preferred outcome of feminist groups during the public hearings. However, while their stance was based on the belief that commercial interests drive the proliferation of these technologies, that rationale behind the Commission's decision was purely economical. Aware of the fiscal concerns dominating the national health care agenda, the Commission's evaluation of IVF was based entirely on its cost-effectiveness.

While the Commission's recommendation on IVF coincided with government's fiscal agenda, its stance on embryo research contradicted the conservative social politics of the Mulroney government. As mentioned earlier, the Minister of the department of Health and Welfare in 1988 stopped funding embryo research due to his moral stance against abortion. However, despite the Mulroney government's general opposition to

embryo and foetal tissue research (or maybe because of it) the Commission went ahead and gave it a green light, albeit with some restrictions. The Commission sided with the principle of 'scientific progress' and argued that this type of research should be allowed within a regulatory regime.

Ultimately, the recommendations put forward by the Royal Commission reflected a liberal perspective, which viewed the potential dangers of reproductive technologies as easily contained by suitable modes of regulation. Increased participation and representation of underprivileged groups in the decision-making structures of medical and scientific research was advanced as the best remedy for ensuring that the benefits of reproductive technologies outweighed their social and economic costs. The anti-technology position of various religious and feminist groups, which had garnered so much attention in the media, was effectively marginalised from the Commission's framing of the policy discourse.

⁴³⁶ Lorna Weir and Jasmin Habib, "A Critical Feminist Analysis of the Final Report of the Royal Commission on New Reproductive Technologies", *Studies in Political Economy* Vol. 52 (Spring 1997), 150.

Chapter 8 - Conclusions and Findings

This chapter provides an overview of the dissertation's central findings and offers some final thoughts on the contribution of this case study both to the literature on royal commissions and to the role of ideas in the policy process. The chapter begins with an examination of the internal, organisational factors that hindered the representation of alternative perspectives on reproductive technologies within the Commission's official deliberations. It then examines two external factors that contributed to the individual rights discourse on reproductive technologies, namely the legacy of abortion politics and the political environment of fiscal restraint. Finally, the chapter concludes with a look at some of the theoretical issues raised by the case study.

The RCNRT's organisational design

This research characterised policy-formulating royal commissions as institutional forums capable of bringing together different experts and non-experts in a policy debate. While a royal commission's research program generates volumes of studies on a given policy issue, its public hearings allow ordinary citizens and interest groups to express their viewpoints before commissioners and the general public. However, while the vast majority of policy-formulating commissions organise their work to include research and public consultations, they vary significantly in the level of integration between the two streams of activities. The level of integration is a determining factor in the success or failure of a royal commission as an open forum for policy debate.

The research examined the organisational attributes of a royal commission that influence its ability to represent and include alternative perspectives on a policy issue.

Organisational decisions, such as the development of a research program, the scheduling of public hearings, and the defining of the communication channels among staff members and commissioners, all contribute to the type of policy discourse that ensues. Moreover, as temporary, *ad hoc* institutions, royal commissions have the difficult task of balancing the need for efficiency with their representational functions within a short time span. Many times, the organisational design of a royal commission both reflects and foreshadows its priorities for deliberations.

This case study examined the impact of the RCNRTs' organisational design on the representation of alternative perspectives in a policy debate. It found that the Commission's 'formative decisions' regarding its organisational structure and management processes reinforced the privileged status of medical-scientific knowledge in the debate. For example, the Commission used scientific and technological terms of reference to organise its research program. As a result, the research studies dealt predominantly with scientific and medical issues and themes, including the effectiveness of fertility treatments and the medical benefits derived from embryo research. Except for a handful of sociological studies, the social sciences were given second billing in the Commission's research agenda.

Another factor that contributed to the scientific bias of the research program was the inability of other Commissioners to influence decisions involving the research agenda. Typical of most royal commissions, the research themes of the RCNRTs were developed early on by the Chairperson and the Executive Director of the Commission. The input of other Commissioners on research matters was limited to providing suggestions after the research program had been implemented. The research agenda of

the RCNRTs was established in this manner. Chairperson Baird and the Executive Director, John Sinclair, devised the framework of the research plan shortly after the Commission's appointment. This action was criticised by four of the Commissioners who argued that the research program had been developed without their involvement. The dissenting Commissioners argued that Baird's personal and professional bias as a prenatal geneticist greatly influenced the pro-technology tenor of the research program.

Another organisational feature that hindered the discursive capacity of the Royal Commission was the rigid divisions established among its streams of activities, that is, its research work, its policy analysis and its public consultations. The policy analysis and research work functioned as separate organisational units. Staff members working within each unit were separated from each other and there was little interaction between them regarding the information being produced by each set of activities. There were no mechanisms in place to facilitate dialog among members of the two units. This contributed to the lack of integration between the findings of the research studies and what was being heard during the consultations.

The limited information flow among personnel, upper level managers and Commissioners also undermined the discursive capacity of the Commission. The Commissioners were isolated from the research teams and personnel working in the consultation group. Senior managers and directors acted as intermediaries between Commissioners and lower level staff members. In-house researchers had little contact with the Commissioners except through upper management. A number of researchers felt that there was little feedback from the Commissioners regarding the relevance of research findings to the Commission's mandate. In turn, the dissemination of

information and findings to the Commissioners was managed and controlled by senior staff officials. This hampered the development of any meaningful dialogue between Commissioners and researchers, and provided another obstacle for the representation of alternative perspectives in the Commission's official debate on reproductive technologies.

Another organisational attribute that contributed to the privileged status of medical-scientific knowledge in the debate was the Commission's decision not to provide research funds to citizens' groups. A number of commissions, including the Berger Inquiry and the Royal Commission on Aboriginal Peoples, provided intervener funding for groups to conduct their own research and to consult their constituents. Intervener funding is an important tool for 'levelling the playing field' between well-funded professional organisations and lobby groups, and citizens groups that lack the resources to conduct their own research. The RCNRTs' decision not to provide intervener funding prevented citizens groups from educating their members on the complex issue of reproductive technologies and affected the quality of their briefs and submissions. This further increased the epistemological divide between expert and non-expert knowledge during the public hearings and in the media as well.

Dissent in the women's movement and the politics of reproductive choice

While the Commission's internal management processes and organisational structures served to marginalise alternative perspectives on the issue of reproductive technologies, other factors within the broader political and policy environments contributed to the advancement of the individual-rights discourse, namely the policy legacy of abortion politics and the dissent in the women's movement regarding science

and medicine. The research found that the majority of women's groups that participated in the Commission's consultation process linked reproductive technologies with the issue of abortion rights. Their briefs and submissions to the Commission appealed to central themes found within the abortion-rights movement, including individual choice and reproductive freedom. While the majority of these groups did raise concerns regarding the cost-effectiveness of these technologies and their potential health risks for women, they nonetheless argued that they enhanced women's reproductive choices. Moreover, a majority of women's groups that adhered to an individual rights discourse were active members of the abortion rights movement in Canada - a movement whose primary objective was to protect women's reproductive autonomy through legal means and avenues. For this reason, the language of 'rights' permeated their stance on the issue of reproductive technologies.

Abortion rights groups were also compelled to centre their arguments on reproductive choice because of the mobilisation efforts of anti-abortion groups before and during the Commission's deliberations. As mentioned earlier, both religious and anti-abortion groups regarded the Commission as an opportunity to revisit the 'personhood' status of the foetus. These groups participated in all the hearings across Canada and submitted numerous briefs and written reports outlining their opposition against both embryo research and fertility treatments. Abortion rights groups argued that any ban on reproductive technologies would have a 'slippery slope' effect and possibly lead to restrictions on access to abortions. Banning embryo research on the basis of an embryo's 'personhood' status, they argued, would inevitably influence government policy on abortion in a way that was detrimental for women's legal rights.

Other women's groups tried in vain to separate the issue of reproductive technologies from abortion rights. Several of the groups that had been involved in the lobbying efforts to appoint a royal commission argued that reproductive technologies undermined rather than enhanced women's reproductive choices because they reinforced the social pressure for women to become mothers and they entailed a fragmentation of the reproductive process which rendered women dependent on medical and scientific experts. Moreover, these groups contended that the development and application of these technologies was driven not by actual health needs of women but by the financial interests of pharmaceutical and biomedical companies. In essence, these groups rejected the 'individual rights' discourse and appealed to a 'social justice' perspective concerned with the impact of these technologies on the social and economic status of all women. According to these groups, a ban on these technologies was the only viable mechanism to protect women's health and social well-being.

Another dispute which divided women's group along the same lines centered on conflicting perspectives of science and scientific knowledge. Women's groups in favor of reproductive technologies based their arguments on assumptions of the liberal-rational tradition of scientific progress. They viewed scientific and technological developments as essentially neutral and potentially liberating for women. Women's groups opposing reproductive technologies took a decidedly different view, and argued that medical science reflects and reinforces patriarchal and misogynist values and has contributed to women's disadvantaged position in society. Rather than emancipating women, medical science is regarded as a form of control, which has contributed to women's suffering. These political and epistemological disputes among women's groups contributed to the

lack of consensus on the issue of reproductive technologies. This division hindered the development of a clear and coherent alternative perspective to the ‘individual rights’ discourse advanced by medical and scientific professionals and the Commission’s staff members. Ultimately, the ‘anti-science’ perspective remained outside the Commission’s official debate over reproductive technologies, in contrast to the pro-technology stances of liberal feminists, which were represented by the Commission’s membership and expert research.

Health care, fiscal restraint, and the RCNRTs

As is the case with all policy-formulating royal commissions, the Commissioners and staff of the RCNRTs were keenly aware of the political climate in which they were operating. In the early 1990s, the dominant issue on the political agenda was the need to control and reduce the deficit and to streamline the public sector. Health care was not immune to the federal government’s call for fiscal restraint in public spending. The RCNRTs approach to the issue of reproductive technologies and the recommendations it established for their future regulation reflected current pressures on the Canadian health care system. The Commission adopted an ‘evidence-based’ framework to evaluate the effectiveness of fertility treatments and other related practices in order to determine whether they should be included in the universal single-payer health care system. The evidence-based approach to medical care was utilised to resolve questions concerning which services should be considered medically necessary, who should have access to them, and who should pay the costs.

Unlike the British Warnock Committee that preceded it, the RCNRTs placed some limitations on the availability and funding of *in vitro* fertilisation. The Commission

argued that access to IVF treatments should be restricted to individuals and couples who meet a specific medical criterion. The evidence collected by the Commission revealed that IVF was only effective in rectifying infertility caused by fallopian tube blockage. Its use for other diagnosis was proven to be ineffective in most cases. Given this empirical evidence, the Commission recommended that IVF treatments be publicly funded only for cases of tubal blockage. For other diagnoses, the Commission recommended that IVF be offered in the context of research, that is, outside the publicly - funded health care system.

The Commission's recommendations on access to IVF treatments reflected the fiscal pressures facing the health care system and the competition for public funds within the medical community. As the dissertation revealed, medical groups representing specialisations other than reproductive medicine were concerned that the inclusion of IVF and other expensive treatments in the health care system would decrease funding for other medical services and procedures. While the groups felt individuals and couples had a right to biological parenthood, this right was not a socially guaranteed one. Other priorities in the health care system would have to take precedence over the needs of the infertile. For this reason, medical groups found outside the area of reproductive health advocated a mixed, public-private system in reproductive medicine. Ultimately, the Commission's stance on IVF treatments was not a response to feminist calls for restrictions but rather was the result of negotiations among competing professional interests vying for scarce health care funds.

Contributions of the research

The findings of this case study on RCNRTs contribute to the overall literature on royal commissions by suggesting a link between the internal workings of an individual commission and the policy discourse on a given issue. Most of the literature provides a broad, macro-level view of royal commissions in the policy process. Early research depicted commissions as inherently conservative institutions used by governments to delay action or to produce policy-relevant knowledge. Public hearings and research programs, salient features of royal commissions, were often regarded as mechanisms to build public support for government policy. In later years, researchers began assigning a more dynamic role to royal commissions, highlighting the representational functions they perform in the policy process. These researchers argue that a commission's dual mandate of research and public hearings makes it a viable forum for public deliberation among experts and non-experts.

While the discursive potential of royal commissions has been suggested in the literature, little empirical research has been conducted to support this claim. Indeed, this claim is based largely on the experiences of the Berger inquiry and the Royal Commission on Aboriginal Peoples. While there have been a number of case studies on a number of royal commissions, most notably the Macdonald Commission, the majority of them focused solely on the role of commissions in social scientific research. Not much attention has been given to the interaction between experts and non-experts within the structures of a commission's official debate on an issue.

The central aim of this case study on the RCNRTs was to uncover the organisational attributes that either enhanced or hindered a royal commission's ability to

forge a debate that included a wide range of expert and non-expert perspectives on a given issue. The dissertation argued that the formative decisions that structured the flow of information within the Commission greatly influenced the ways in which expert and non-expert perspectives are represented, challenged and negotiated. For example, the rigid division between the research work and public hearings, and the conspicuous absence of a mechanism to integrate their separate findings, served to marginalise critical, expert and non-expert perspectives. Moreover, the privileging of 'efficiency' and 'timeliness' over consensus and dialogue by both the Chair, and upper management, precluded the opportunity for an open dialogue between experts and non-experts and among experts themselves. These organisational attributes, along with others, contributed to the framing of the issue of reproductive technologies in terms of individual reproductive choice, scientific progress, and professional autonomy.

The literature on ideas and institutions informed a central premise of the dissertation that public policy could best be explained by the interaction between ideas and intermediary institutions. The literature on policy discourses was especially useful in showing how the unique attributes of an institutional setting influence the framing of a policy discourse. From macro-level institutions, (like parliamentary systems), to the informal routines and standard operating procedures of an organisation, institutions determine the rules of the game that privilege certain political actors and collective strategies over others. Much of this literature links policy ideas with the cognitive maps of experts and social scientists. Experts are regarded as 'discourse definers', providing the knowledge base for understanding a perceived problem and constructing possible

solutions. Concepts, like ‘discourse coalitions’ and ‘epistemic communities’ assign to experts a central role in problem identification and policy formulation.

This is both a strength and weakness of the literature. The literature rightfully rejects rationalist and pluralist accounts of policy-making, and introduces the expert and expertise in general as important explanatory variables in the study of public policy. However, the literature, to a large degree, erroneously equates policy-relevant knowledge with scientific or expert knowledge. The cognitive maps of experts are said to be the driving force behind the introduction of innovative ideas to the policy process through the personal interaction among political actors and specialists. This narrow conceptualisation of knowledge ignores the cognitive maps of non-experts and the contributions they can make to the framing of a policy discourse. The literature keeps intact the epistemological divide between expert and experiential forms of knowledge, and therefore remains silent on the contributions of non-experts to policy debates.

This research suggests that the conceptualisation of policy-relevant knowledge as professional or technical expertise is an erroneous one for it obscures the contributions of non-experts in a policy debate. The case study on RCNRTs revealed how an international network like FINRRAGE mobilized academics, feminist activists and women’s groups in an effort to forge an alternative framework for evaluating reproductive technologies, both in Canada and abroad. Moreover, the cognitive map of abortion-rights groups had an important role to play in reinforcing the terms of the debate in Canada along individual rights and reproductive choice. This position complemented the medical-scientific framing of reproductive technologies.

This dissertation began with the suggestion that royal commissions are unique sites for public deliberation on policy issues and that they provide opportunities for non-experts to access the policy-making process. As a case study, however, the RCNRTs was chosen not for its success or failure to achieve these goals. Rather, the RCNRTs was itself a good example of some of the tensions and challenges confronting commissions and similar institutional forums in their efforts to integrate different forms of expert and non-expert knowledge.

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Pentecostal Assemblies of Canada. Public Hearings Transcripts. Toronto, 19-20, 1990.

Planned Parenthood. Public Hearings Transcripts. Ottawa, September 20, 1990.

R.E.A.L. Women of Canada. Public Hearings Transcripts. Toronto. November 20, 1990.

Society of Obstetricians and Gynaecologists of Canada. Public Hearings Transcripts. Toronto, October 31, 1990.

Tawow Society. Public Hearings Transcripts. Yellowknife, September 12, 1990.

Yellowknife Women's Centre, Public Hearings Transcripts, Yellowknife. September 12, 1990.

Appendix 1 – Organisational Chart of RCNRTs, 1989-1993

Appendix 2 – Interviews and Personal Correspondence

Commissioners

- Baird, Patricia. Phone Interview. May 28, 2001.
- Knoppers, Bartha. Personal Interview. Montreal. July 13, 2001.
- Scorsone, Suzanne. Personal Interview. Toronto, September 10, 1999.
- Vandelac, Louise. Personal Interview. Montreal, May 28, 2001;

Former Staff Members

- Respondent 1. Personal Interview. September 3, 1999.
- Respondent 2. Personal Interview. September 13, 1999.
- Respondent 3. Personal Interview. September 15, 1999.
- Respondent 4. Personal Interview. May 10, 2001.
- Respondent 5. Personal Correspondence. March 15, 2001.
- Respondent 6. Phone interview. May 17, 2001.
- Respondent 7. Personal Interview. May 31, 2001.
- Respondent 8. Personal Interview. September 5, 2001.
- Respondent 9. Personal Interview. September 5, 2001.

Outside Researchers

- Respondent 10. Phone Interview. October 30, 2001.
- Respondent 11. Phone Interview. October 2001.
- Respondent 12. Phone Interview. November 5, 2001.
- Respondent 13. Phone interview. November 19, 2001.

Representatives of Participating Groups

- Newton, Linda. Personal Interview. November 1995.
- Mulay, Shree. Phone Interview. November 1995.
- Tate, Catherine. Personal Interview. November 1995.

Others

- Respondent 14. Personal Interview. September 10, 1999.
- Respondent 15. Phone Interview. October 11, 2001.

Appendix 3 – Consent Form

Research Project Title: Experts, Non-Experts and Policy Discourse: A Case Study of the Royal Commission on New Reproductive Technologies.

Investigator: Francesca Scala, PhD Candidate, School of Public Administration, Carleton University.

Supervisor: Frances Abele, School of Public Administration, Carleton University.

This consent form confirms your willingness to be interviewed for the aforementioned research project. The form will provide you with a brief description of the research project, the purpose of the interviews, and what your participation involves. If you require further information or details, please feel free to ask. Please take the time to read this form carefully and to understand the information it contains.

The purpose of the research is to examine how the Royal Commission on New Reproductive Technologies influenced or shaped the discourse on the issue of reproductive technologies. It is especially interested in uncovering how or to what extent the Commission's research and public hearings reconciled the diverse and often conflicting positions on the issue of reproductive technologies.

The interview will be unstructured and is expected to last approximately 1 to 2 hours. If the information you provide is of a personal nature or may have negative consequences on your professional reputation or career, you have the right to remain anonymous. Identifiable data will be excluded from the research results and will be closely guarded by the researcher.

Your signature on this form indicates that you have understood the information regarding participation in the research project and agree to participate in an interview. In no way does this waive your legal rights nor release the researcher or involved institution from their legal and professional responsibilities. You are free to not answer questions at any time during the interview. Written notes from the interview will be made available for your review by the researcher.

If you have questions regarding your rights as a potential participant in this research, you may contact: Frances Abele, School of Public Administration, Carleton University at 613-520-2600.

Please check the appropriate box(es) to indicate your preferred option(s):

☐ **The investigator may quote from the interview and identify the speaker**

☐ **The investigator may quote from the interview but not identify the speaker**

☐ **The investigator can neither quote directly nor identify the speaker**

☐ **I would like notice of the availability of the dissertation at Carleton University's Library**

I have read the form that explains the purpose and use of results of this research. I expect that all information I decide to give will be treated in an ethical manner.

Participant's Name

Participant's Signature

Date

Researcher's Name

Researcher's Signature

Date