

# Public inquiries in Canada: What you need to know in the age of COVID-19

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# Meet our speakers

## Moderator



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# **Public inquiries 101: Context, background, and risks**

Adam S. Goodman

- Public health emergency and economic crisis
- Precedents
  - SARS (Campbell)
  - Tainted Blood (Krever)
  - Long-Term Care Homes (Gillese)
- COVID-19
  - Ontario & Quebec – Long-Term Care
- *Emergencies Act*, R.S.C., 1985, c. 22 (4th Supp.), s. 63

- *Ad hoc* process called by government
  - Established by Order-in-Council
- Spectrum of processes available to government
  - Varying degrees of formality
- Public inquiry is the most formal and legalistic process available
  - Similarities to civil litigation
- Potentially time-consuming, lengthy, and expensive
  - Funding?

- OIC
- Establishment of Commission
  - Commission Counsel and investigation team
- Rules of practice
- Standing (and funding?) hearings
  - Party vs. intervenor standing
- Evidence gathering – similar to discovery
- Hearings
- Submissions
- Report

- Reputational most significant
- Risk of criminal or civil liability?
  - Direct vs. indirect
- Findings of “misconduct”
- Media / press

# **Public inquiries in Québec**

Margaret Weltrowska

- ***Act respecting public inquiry commissions, CQRL c. C-37***
  - Two principal functions: investigation (fact-finder) & guidance (proposer of public policy reform)
  - Appointed commissioners have, with respect to the proceedings, all the powers of a judge of the Superior Court (they can compel any person to appear, testify and produce any evidence)
- **“Commission of inquiry” vs “Power of inquiry”**
  - Public inquiry commissions:
    - widely used by all levels of government
    - variable results
    - high level of confidence from the public
  - Inquiries by *ad hoc* investigators:
    - the Minister of Education's investigation of the organization or the operation of an educational institution or school board
    - the Minister of Public Safety's investigation of the Sûreté du Québec or any other police force.
- Advisory committees

## Coroner's public inquiry

- June 17, 2020 - Announcement of a public inquiry
  - The Quebec's chief coroner, Pascale Descary, has ordered a wide-ranging inquiry into deaths that have occurred in the province's long-term care facilities, private seniors' residences and other residential institutions for vulnerable individuals. (Act Respecting the Determination of the Causes of and Circumstances of Death, R-O.2)
    - The death occurred while the person was living in a CHSLD, private seniors residence or a residential institution for vulnerable people or those who have lost some degree of autonomy.
    - The death occurred between March 12 and May 1, 2020.
    - The coroner's office was alerted to the death because of its violent nature or because of the possibility that negligence contributed to the death.
    - Lawyer Géhane Kamel, the coroner responsible for the CHSLD Herron inquiry, will preside over the larger inquiry with the assistance of Dr. Jacques Ramsay, a coroner with extensive medical training.
  - Parallel Coroner's investigation into the deaths at CHSLD Herron, and the Québec Ombudsman investigation into the Covid-19 crisis

## Coroner's public inquiry:

- Entirely public investigation
- Power to compel witnesses and produce evidence
- No power to make findings on civil liability or criminal responsibility
- Hearings to begin in January 2021
- The inquiry will determine the causes and circumstances of the deaths and provide recommendations on how to prevent these types of deaths in the future
- Recommendations could be for institutions, individuals or the government — “the goal is to find constructive solutions to avoid these types of deaths in the future”
- Disagreements on the approach: Is a formal public inquiry the best way to investigate the handling of COVID-19, or does the urgency of the situation require a more efficient mechanism? Parallel scientific or technical investigation contemplated by the government

## How to prepare?

Take steps as soon as possible to gather evidence that will be helpful in presenting the case to the inquiry.

- Gathering and preserving documentary evidence
- Identifying and interviewing potential witnesses
- Giving some thought to the “story” that the facility wishes to tell to the inquiry and the public

Steps should be considered early on in the process in order to preserve the best evidence available.

# Political Roundtable: What to expect going forward

- Philippe Couillard
- James Moore
- Allan Gregg

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# Thank you

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