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The Westray Mine Explosion: The Production of a Public Inquiry

Wanda Ross

2001

**Submitted to the Department of Criminology, University of Ottawa, in partial
fulfillment of the requirements for the degree of Master of Arts**

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ABSTRACT

The Westray Mine disaster, that occurred on May 9, 1992 in Pictou County, Nova Scotia led to the death of twenty-six miners and has been linked to gross corporate violations. A public inquiry into the Westray Mine explosion was called on May 15, 1992 by Nova Scotia premier Donald Cameron.

In this thesis a qualitative discourse analysis is applied to the examination of the Westray Mine Inquiry Report, the seventy-four recommendations from the Inquiry and a sample of the Inquiry transcripts. This research includes the exploration of the key players, problematizations which emerged in the discourse, the formal and informal rules and the relationships of truth and power. There is also an analysis of several key themes, including: the nature of the Inquiry discourse, the Inquiry's conceptualization of risk and its construction of the distinction between the private and public sectors.

The theoretical framework for this thesis was provided by literature on governmentality which I found particularly pertinent to the analysis of public inquiries. In this thesis, the governmentality framework was helpful in formulating research questions and an analytics of government approach provided useful research guidelines for my study. Public inquiries are also analyzed as an example of reflexive government since they react to governability problems by including the public and developing recommendations for changes in the governing style. The aim of this thesis is to examine how the Westray Mine Inquiry evolved as a form of governing. This is accomplished through an exploration of mechanisms, practices and discourses related to the production of the Inquiry. The thesis traces its frame of reference, formal and informal rules, power relations, hierarchies of knowledge, tactics, rules of inclusion and exclusion as well as the

relationship between the Inquiry discourse and the final set of recommendations.

ACKNOWLEDGMENTS

I would like to thank my thesis supervisor Professor Maria Los, PhD, whose guidance and support throughout this thesis has been invaluable.

DEDICATION

This Master's thesis is dedicated to the memory of the twenty-six men who died in the Westray Mine explosion.

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CHAPTER 1

INTRODUCTION

The focus of this thesis is to examine how the Westray Mine Inquiry evolved as a form of governing. This is done through an exploration of mechanisms and practices related to the production of this Inquiry. The term 'governing' in this thesis refers to a broad range of practices utilized to govern individuals and groups or utilized by individuals and groups to govern themselves. These practices include ways of producing truth, knowledge, order and power in the Westray Mine Inquiry. This particular Inquiry was selected for analysis after I saw the devastating effects of this disaster on the community at the time of the explosion. After witnessing the effects of the Westray Mine explosion on classmates whose families had been affected by the disaster, I became interested in studying this subject. My investigation is based on a discourse analysis of the Inquiry recommendations and a sample of the transcripts from the Westray Mine Inquiry hearings. The remainder of the Introduction provides a description of the function and importance of each of the subsequent chapters in this thesis.

Chapter 2 reviews debates and research surrounding public inquiries. This chapter consists of two parts. The first part summarizes academic debates about the

functions, merits and dangers of public inquiries. The second part reviews those research projects that focused on the exploration of public inquiries as such as opposed to those studies that aim at elucidating the problem that triggered a public inquiry. This chapter provides insights into the theoretical and methodological frameworks that have been utilized in the academic literature pertaining to the study of public inquiries. This review of relevant studies was designed to help in the decision about how to approach the study of public inquiries in this thesis.

In Chapters 3 and 4, the theoretical and methodological frameworks selected for this thesis are explained. Discussions about the theoretical framework will include an examination of specific elements which will help to guide the study of the Inquiry, such as the governmentality framework and concepts surrounding risk and risk-management. A review of the implications of neo-liberalism and changing business-state relations for handling corporate wrongdoing is presented in the final section of the theoretical framework chapter. Chapter 4 describes the type of data and the methodology that will be used in the analysis of the Inquiry. The sources of data for this study are the Westray Mine Public Inquiry report, a sample of transcripts from the Inquiry hearings and the final recommendations. The main focus of the sections on methodology is discourse analysis. Finally, specific categories and questions for the coding and analysis of the documents selected are listed and their relevance explained.

Background information that helps to contextualize the Westray Mine Inquiry is presented in Chapter 5. This information concerns issues pertaining to the Westray Mine, such as the mining industry in the area, the decision to open the mine, the role of

politicians, the circumstances of the disaster and the subsequent criminal trial. A review of relevant literature includes academic research completed on the Westray Mine explosion and points to the absence of studies that would focus on the production of the Westray Mine Inquiry.

Finally, in Chapter 6, the results of the analysis of the Westray Mine Inquiry are explained and conclusions of this thesis are elaborated. This chapter is divided into three sections. The first section presents descriptions of the findings including subsections on the examination of the key players, problematizations, formal and informal rules, truth and power relationships and descriptions of the Inquiry hearings and recommendations. A discussion of the findings, presented in the second section, consists of an analysis of such themes as discourse, risk and public/private distinctions in the Inquiry. The final section of the chapter provides conclusions to this thesis.

**PART I: LITERATURE AND DEBATES ON PUBLIC
INQUIRIES**

CHAPTER 2

DEBATES AND RESEARCH ON PUBLIC INQUIRIES

A public inquiry is a quasi-judicial administrative process that reports to parliament and is separate from the court system (Cowan and MacDonald, 1980). Public inquiries originated in the nineteenth century Britain in connection with the enclosure of land (Ashenden, 1996; Kempt, 1985). Through the process of including the public in the decisions being made about the enclosure of land, via public meetings headed by commissioners who produced reports, public inquiries emerged. These public inquiries “attempted to display characteristics of openness, impartiality, and justice” (Kempt, 1985: 180). In Canada, public inquiries have been utilized in the investigation of a wide variety of issues since confederation (d’Ombrain, 1997). This chapter reviews the key debates on public inquiries and their functions and gives a brief account of academic research in this area. Although some scholars have examined public inquiries as a source of information about particular controversial events, the ‘Academic Research’ section focuses specifically on those scholars who have utilized a theoretical framework to analyze public inquiries themselves.

PUBLIC INQUIRIES: KEY DEBATES

This section will outline the key debates in the literature in reference to public inquiries. The following are the strengths of public inquiries as listed by Smith (1982: 564):

- democratic, open
- flexible methodology
- in-depth analysis.

The weaknesses are that public inquiries are:

- ad hoc, adversarial
- costly and lengthy
- means of inaction
- reliant upon personality of commissioner(s) (Smith, 1982: 564).

Based on his research, d'Ombrain (1997) attributes the increases in the cost and length of public inquiries since the mid 1970s in part to the expansion of the mandates of the inquiries. The increase in cost and length of public inquiries can also be attributed to concerns pertaining to judicial procedure and the rights of individuals testifying at the inquiry. When these types of questions arise, it requires the inquiry committee to utilize additional resources to investigate and decide on each issue that is challenged.

Individuals testifying at a public inquiry are protected under the *Evidence Act* and the *Charter of Rights* in that testimonies presented to the inquiry cannot be used in the prosecution of the individual (d'Ombrain, 1997).

While inquiries are inquisitorial and the commissioner actively investigates the situation, Choiniere (1985-1986) argues that witnesses do not have the necessary rights and protections that are present in the legal system. She writes that due to the

inquisitorial nature of inquiries, some individuals are not protected from questions which could be perceived as irrelevant. She states that the Grange Inquiry into the increased number of deaths of patients at Toronto's Hospital for Sick Children perpetuated stereotypical images of women in part due to the nature of questions directed to the nurses at the hospital. Choiniere argues that in order to protect witnesses there need to be limits placed on the questioning that is permitted. According to Schwartz (1997), public inquiries lack mechanisms for protection of civil liberties. His solution to this problem is to create a public inquiry only after there have been extensive preliminary studies and background research, in contrast to the current system where inquiries commence in the middle of a debate (Schwartz,1997).

Although witnesses testifying at public inquiries are protected under the *Evidence Act* and the *Charter of Rights and Freedoms*, d'Ombain (1997) argues that witnesses need additional protection. He argues that witnesses do not feel that they are protected and they have become cautious in giving their testimonies. His answer to this problem is to develop a balance between individuals' rights and the rights of the public represented through the inquiry. Although it is difficult to achieve this balance, d'Ombain suggests procedural changes. He writes that the terms of reference for investigative public inquiries should be better defined and focus on the actions which led to the problem and on the development of a solution to the problem. At the same time he recommends that the focus of the inquiry should move beyond the focus on individual actions or inactions. Although this procedural change would not completely protect individual rights, it would make the process less intimidating to the individuals by focusing on the cause of the

problem and not on the individual (d’Ombrain,1997). The next section explores the debates on functions of public inquiries.

The Functions of Public Inquiries

According to the constitution, public inquiries serve to advise government ministers, but there is debate within the literature about the actual function of public inquiries (Rodger,1985; Wilson, 1982). For example, d’Ombrain (1997: 103) argues that investigative inquiries enhance “public confidence in the credibility of government” and policy inquiries allow new ideas about policy to be generated. Other scholars in favor of public inquiries argue that they serve the public, involve the participation of various groups within society (Coates, 1973; Smith, 1982) and allow the government to collect opinions and experiences pertaining to a specific topic (Wilson, 1982). Supporters of public inquiries also contend that they enable the public to acquire knowledge about a topic before action is taken. Public inquiries essentially give the public and officials the necessary time and knowledge that are needed to make a decision on a particular issue (Smith, 1982; Wilson, 1982). Other scholars believe that public inquiries function to show the public that the government is in control of the situation and to reassure the public that it is working towards a solution (Burton and Carlen, 1979; Mannette,1988; Wilson, 1982).

Scholars critical of public inquiries emphasize that the two most common misconceptions about public inquiries are that they provide the opportunity for groups involved to voice their concerns and that the recommendations are based on the outcome of these debates (Rodger, 1985). According to Rodger (1985), public inquiries are often

criticized by the public for being an unfair tool used by the government. Public inquiries may be seen as unfair due to the fact that the information that is allowed to be expressed at the inquiry is constrained by a number of factors such as legal rules, the terms of reference or a pre-determined agenda established by the commission. Another reason for public inquiries being perceived as unfair relates to the ability of those in control of the inquiry to prohibit some groups from giving testimony, or to include others (Allison, 1986; Rodger, 1985). Analysis of the legal framework indicates that even if a group is granted permission to give testimony at an inquiry, the recommendations made by the inquiry do not have to be based on all testimony or evidence presented (Cowan and MacDonald, 1980) and commissioners are permitted to base their decisions on a limited number of factors (Allison, 1986). Both scholars and the public often question the powers of the public to influence the conduct and the outcome of the inquiry (Cowan and MacDonald, 1980). Various scholars also contend that the commissioner who leads the inquiry is typically limited in the scope of the inquiry by its terms of reference. When the terms of reference and therefore the scope are not broad enough, the findings may be inadequate (Burton and Carlen, 1979; Cowan and MacDonald, 1980; Rodger, 1985; Smith, 1982).

Other critical scholars, such as Cowan and MacDonald (1980), write that public inquiries serve to “diffuse politics”. The diffusion of politics according to these authors refers to the concealing of those who are actually making the decisions by allowing the inquiry commission to make the recommendations. The government is then able to select the recommendations to be implemented (Cowan and MacDonald, 1980). The

independence of an inquiry from the government is also being called into question, especially after the government decided to discontinue the inquiry into the Canadian Armed Forces conduct in Somalia. The Somalia Inquiry was the first public inquiry to be terminated by the government. It was terminated before senior officials could be questioned about the attempt to cover-up the actions of the Canadian Armed Forces (Desbarats, 1997; d'Ombrain, 1997; Schwartz, 1997). The following subsection examines academic research on public inquiries.

ACADEMIC RESEARCH ON PUBLIC INQUIRIES

Researchers have studied public inquiries from a variety of perspectives. Some scholars have utilized public inquiries as a reliable source of data while others have focused their research on public inquiries themselves. Some latter authors, representing a range of theoretical perspectives, have analyzed how public inquiries are constituted and used as a political process. For example, Mannette (1988) applied a structural Marxist perspective in her analysis of the inquiry into the wrongful conviction and imprisonment of Donald Marshall. The focus of her analysis is on the structural effects of an inquiry, primarily its contribution to the reproduction of hegemony. She writes that inquiries “are crucial mechanisms in hegemonic renegotiation following ideological disruptions” (Mannette, 1988:166). In her analysis of the reproduction of hegemony in the Donald Marshall Inquiry, Mannette qualifies the structural Marxist perspective by adding that hegemony is based on ethnicity and that including minority groups is the most common method utilized by the government to restore hegemony. Although inquiries typically

permit minority groups to make submissions, these submissions are constrained by the guidelines and limits set by the inquiry. Additional constraints that are applied to minority submissions are enumerated in the following quote:

The dominant relevancies of inquiries weaken minority interests through expert opinion; judicial investigation destroys their legitimacy; scientific explanation displaces them as interested; and minority interests are incorporated into inquiry relevancies through legal representation (Mannette, 1988: 172).

According to Mannette (1988), by allowing minority groups to participate in public inquiries, the dominant group essentially enhances its power since the powerless are consenting to the inquiry process through their participation. Mannette applies this theoretical framework to the Donald Marshall Inquiry by examining the Submission of the Union of Nova Scotia Indians to trace discourses and documentation that define the problem. She states that the submission itself indicates consent from the Mi'Kmaq people to the inquiry. In her analysis of the submission, Mannette concludes that it is organized according to the rule of law which involves the examination of actions of individuals and not the system. She argues that the author of the submission attempts to connect racist attitudes to racist practices while adhering to the rule of law. Through the examination of the submission, Mannette illustrates how minority groups are utilized in an inquiry to restore the hegemonic order and repair the crack in the ideology of the society which initiated the inquiry (Mannette, 1988).

In a similar vein, Taylor (1984) writes that public inquiries allow the state to restore hegemonic order. He argues that after a disaster, the hegemonic order and ideology are restored in society through public inquiries that reconstruct the disaster

through discourses that are, for example, legal and scientific. Taylor applies his theoretical analysis to the Inquiry into the Glace Bay coal mine disaster and the Ocean Ranger Inquiry that examined an oil drilling accident. In his analysis of these two inquiries Taylor addresses three functions of public inquiries:

1) the designation of the crisis/problem as a temporary failure, a case of human fallibility or a case of mistaken allegation; 2) the re-establishment of an image of the state that embodies legal coherency and administrative rationality; 3) the production of a discourse of unity and cohesion among the representatives of the inquiry (1984: 93).

He then relies on the framework developed by Burton and Carlen (1979) to generate specific questions to examine the three functions of public inquiries stated above. In their research, Burton and Carlen (1979) are primarily concerned with knowledge and power issues as manifested in inquiries and other official documents. They argue that when analyzing inquiries it is important to examine how they may represent “a system of intellectual collusion” which perpetuates hegemonic domination after a disruption in the social order (Burton and Carlen, 1979: 7). Essentially, the inquiry report itself provides a public medium where ideas are expressed for the repair and reform of the disruption in society. Typically in public inquiries, the intellectual collusion involves knowledges becoming transformed into practices. In their analysis of government publications, the authors utilize discourse analysis to guide their study. One of the features of discourse analysis is that it calls for the examination of relationships and authority involved in the production of discourse (Burton and Carlen, 1979).

In his analysis of the Glace Bay coal mine disaster and the Ocean Ranger Inquiry,

Taylor (1984) concludes that both inquiries perpetuated hegemonic domination as the types of questions and solutions produced were developed within “established boundaries”. He states that although the public were permitted to testify in the inquiries, they were often represented through union officials or lawyers. In reference to the Glace Bay coal mine inquiry, he writes about the commission’s dismissal of workers’ testimonies and their adherence to the testimonies of the “experts”. Taylor also states that “The commissions’ adherence to legal epistemology allows them to reinforce and legitimate class relations in capitalist society” (Taylor, 1984: 188).

Relationships of power and authority, especially with respect to the treatment of minorities are also seen as important by Mannette. She contends that commissioners of public inquiries are able to arbitrarily decide when to utilize minority views or to insert them into their report. Submissions by a group of individuals such as the victims are often constructed in a way that would be useful to the inquiry. The commissioner has the discretionary power to accept or omit evidence or testimony, to determine what is fact, to organize alleged facts according to subjective criteria, and to determine who is an “expert” or a reliable source and who is not (Mannette, 1988).

The concept of experts is explored by Ashenden (1996) in her analysis of the Cleveland Inquiry which pertains to child sexual abuse. She conducts her research by using:

... the approach outlined by Foucault concerning the analysis of governmental reason and by engaging recent work in the sociology of science concerning the relationship between science and law as discourses combined in the contemporary production of ‘governable’ social relations (Ashenden, 1996: 65).

Public inquiries, according to Ashenden, are used to resolve a problematization or a situation where the act of governing is being questioned and to reinforce the power of specialized expertise in society (Ashenden, 1996; Dean, 1999). In her analysis she focuses specifically on the deployment of scientific and legal discourses to manage governability crisis in the specific area of familial relations and child protection (Ashenden, 1996). According to Ashenden, “legal mechanisms require a range of technical and scientific knowledges which act as forms of expertise or discourses of truth and which function to legitimate the claim of a right to govern or intervene through their claim to truth and objectivity” (Ashenden, 1996: 71). Knowledge from the experts provides the inquiry and the government with the right to make decisions regarding the problem that is being examined. Scientific knowledge presented to the inquiry delivers “facts” which can then be judged by law (Ashenden, 1996). These facts can be seen in public inquiries through the evidence that is examined and included in the report. According to Ashenden (1996), the evidence that is presented to an inquiry is acceptable if it is considered by the public as authoritative which typically means evidence that is portrayed as scientific.

Based on her research, Ashenden (1996) argues that although some experts may be criticized in a public inquiry, the commissioner may at the same time either use other expert testimony to determine what is fact or call for more research, thereby upholding the centrality of “expert opinion”. In her analysis of the Cleveland Inquiry, she concludes that the Inquiry views some experts’ claims to truth as a problematization while using other experts’ claims as a solution to the problematization. The authority of experts

continues to be upheld by the inquiry and recommendations are based on scientific information, characterized by objectivity, truthfulness and rationality. According to Ashenden (1996), there was evidence indicating that during disputes over expert opinion in the Cleveland Inquiry, the knowledge of the majority of experts was considered to be the truth. She also argues that public inquiries may lead to the reduction of a broader problem to a technical problem requiring a technical solution. Reducing complex social problems or serious tensions in the governing rationality to something technical, allows for simple solutions to be developed and implemented (Ashenden, 1996).

An alternative framework that can be utilized in the examination of public inquiries is provided by Dryzek (1995). He believes that Habermas's communicative action concept can be applied to critical theory studies which evaluate practices in society. Dryzek (1995: 101) writes that "the concepts of communicative action, communicative rationality, and systematically distorted communication can and do provide orientation for empirical study." For example, critical communicative action theorists argue that the media are reductionist in that they reduce complex issues in society to simple technical problems. Issues of power and money are also components in the theoretical analysis of the media (Dryzek, 1995).

According to Dryzek, "it is the task of analysts to expose and challenge agenda manipulation, point to strategic exercises of power that foreclose debate, equalize the information available to participants, and uncover moves to distract attention from embarrassing issues" (Dryzek, 1995: 108). Commenting on Kempt's (1985) application of the communicative rationality concept to the Windscale Inquiry into the controversy over

the development of a thermal oxide reprocessing plant, Dryzek writes: “this is an interesting case from the point of view of communicative action because the implicit claim to legitimacy of such an inquiry lies precisely in its status as a forum for public debate open to submission from a wide variety of points of view” (Dryzek, 1995: 105).

In his study Kempt (1985) examines the distortions of the testimonies of specific groups involved in the Windscale Inquiry. In his analysis he uses the concept of the ideal speech situation, developed by Habermas, to identify the distortions contained in the discourse of the testimonies. The ideal speech situation is a standard where there is equality in the selection and application of speech acts. There are four speech act categories: communicatives, representatives, regulatives, and constatives. Each of these categories have special conditions of validity attached to them. The *communicatives* category ensures that all participants have equality in engaging in the discourse. The validity claim with respect to this category is that participants are comprehensive in their discourse. *Representatives* refers to the participants having equality in their expression of discourse without constraints and the validity claim refers in this case to the participants being truthful in their discourse. The *regulatives* category ensures that participants are equally able to regulate the discourse and are equally able to allow or prohibit discourse. The respective validity claim is that the discourse is appropriate since all participants are able to express their concerns. The *constative* speech acts category refers to equality in the ability to interpret and explain discourse to ensure that all claims are based on truth (Kempt, 1985: 186-188).

In his analysis, Kempt (1985) compares the rules of the inquiry, the distribution of

resources available to the groups and rules of admissibility to the ideal speech situation which includes the four speech act categories. From his analysis, he argues that important distortions were created by the inquiry process and that these distortions were constructed in a way that led to the support of the corporation, which is owned by the government, to develop a thermal oxide reprocessing plant. An example of a distortion created by the inquiry process was that economic information pointing against the development of the reprocessing plant was not permitted in the testimonies or submissions of the various groups. Therefore, based on public inquiry studies like the one by Kempt, it can be argued that the type of communication involved may help sustain the existing power relations in society (Dryzek, 1995).

Yet another approach is adopted by John Rodger who refers to the idea of natural justice, pointing to its two important principles that are relevant to public inquiries, “the principle of *nemo judex in causa sua* which specifies that an adjudicator be disinterested and unbiased, and the principle, . . . *audi alteram partem*, which specifies that parties to an inquiry be given adequate notice and an opportunity to be heard.” (Rodger, 1985: 416). He argues that public inquiries tend not to follow these two principles of natural justice since they may prohibit certain groups from voicing their concerns (Rodger, 1985). He suggests that public inquiries can be analyzed through Basil Bernstein’s theory on how knowledge is classified and framed. The classification of knowledge refers “to the relationship between the contents of units of knowledge and categories of people with kinds of knowledge” (Rodger, 1985: 419). “Framing” refers to the way in which rules and power play a role in the categorization of knowledge. This can be applied to public

inquiries through the examination of how knowledge is controlled and what types of social relationships are involved in public inquiries. He states that in public inquiries, individuals representing views that are not technologically based are often not permitted to submit their views and even when they are, their testimony may be disregarded by the commissioner. According to Rodger, in order to understand public inquiries it is necessary to examine the mechanisms through which knowledge is classified and framed within the context of the specific public inquiries. He advocates a flexible type of public inquiry that would be receptive to all types of information, not just expert evidence, presented to the inquiry (Rodger, 1985).

CONCLUSION

Although some scholars have embraced public inquiries for their ability to generate new ideas and provide a valuable service to the public, other scholars have criticized them. Many critics have drawn attention to key aspects of the inquiry process such as cost, length, and individual rights. Authors such as Choiniere (1995-1986), Schwartz (1997) and d'Ombraïn (1997) have called for the implementation of various safeguards of the rights of individuals. They argued that individuals participating in public inquiries should have additional protection from unfair questioning, and the focus of the inquiry should be on the issue that is being studied, not the individuals (d'Ombraïn, 1997). Other critical scholars have also argued that public inquiries are not independent from the government, that they may not provide equal opportunities for all groups to voice concerns and that the recommendations developed by the inquiry do not have to be

based on the debates (Cowan and MacDonald, 1980; Desbarats, 1997; d’Ombrain, 1997; Rodger, 1985; Schwartz, 1997).

Various theoretical perspectives have been used in the analysis of public inquiries. The communicative action concept developed by Habermas was used by Kempt (1985) in his study of the Windscale public inquiry. He concluded that inquiries need to adopt an ideal speech situation as described by Habermas in order to ensure that all individuals have equal opportunity to contribute to and control discourse. The theoretical analysis used by Kempt (1985) can be criticized for being overly idealistic. Even Habermas himself has eventually made significant changes to his theoretical model to make it more realistic (Bohman, 1994). Similar to Kempt, Rodger (1985) also focused on the issue of inclusiveness in production of knowledge, when he analyzed public inquiries through the use of Bernstein’s theoretical analysis on the classification and framing of knowledge.

A primarily structural Marxist perspective focusing specifically on the role of ethnic minority groups in the legal system was used by Mannette (1988) to explain the Donald Marshall Inquiry into a wrongful conviction. She explored how the inclusion of minority groups in public inquiries serves to legitimize the governing process by making them adopt its legal language, frame of reference and rationality. Similar to Mannette, Taylor (1984) examined two public inquiries through issues of power and the role of the capitalist state in framing the inquiry discourse and translating the selected knowledge into specific practices. Both Mannette (1988) and Taylor (1984) focus on the arbitrary state process involved in determining which witnesses are “experts” and how their testimonies are used in the formulation of the recommendations. They pointed to

mechanisms through which public inquiries tend to conceal the real nature of power relations and serve to reproduce hegemony.

While all of these studies deal with the nexus of power and knowledge in the inquiry process, its most sophisticated analysis is offered by Ashenden (1996) in her study of the Cleveland Inquiry into child sexual abuse. She utilizes Foucauldian theoretical concepts in her examination of how power, knowledge and claims to truth play a central role in the production of an inquiry report. Since her approach seems particularly sensitive to the elusive process of discursive production of knowledge, the applicability of Foucault's theoretical thought to the study of the production of the Westray Mine Inquiry will be further explored in Chapters 3 and 4 which elaborates a methodological and theoretical framework for my research.

PART II: THEORETICAL AND METHODOLOGICAL FRAMEWORK

CHAPTER 3

THEORETICAL FRAMEWORK

The literature on governmentality provides theoretical insights that may be particularly pertinent to the analysis of public inquiries. The concept of governmentality, or “rationality of government”, was first developed in 1978 by Michel Foucault (1991a) and has further evolved through research conducted by other scholars such as Mitchell Dean and Patric O’Malley (Dean, 1996; Dean, 1999; O’Malley, 1992; O’Malley, 1996). To elucidate the term governmentality, it is necessary to briefly examine the key arguments of Foucault’s analysis of power and knowledge. In order to begin to explore the governmentality framework, the terms government and governmentality have to be defined. An outline of an “analytics of government” provides key elements that need to be examined when analyzing information within a governmentality framework. The concepts of risk, insurance and risk management are also explored in this chapter since they are examples of practices that are used to govern society and which may have direct relevance to the issue of unsafe working conditions. “Reflexive government” and the “governmentalization of the society” are terms utilized within the framework of governmentality to describe the process which involves a neoliberal transformation of the

national government that results in its growing marketization and merger with society.

These terms are especially important in the study of public inquiries since it can be argued that a public inquiry constitutes an example of reflexive government in action. In the final section of this chapter there is a discussion on neo-liberalism and present trends in state/business relations.

MICHEL FOUCAULT: POWER AND KNOWLEDGE

In his study of power, Foucault states that “in an apparatus like an army or a factory, or some other such type of institution, the system of power takes a pyramidal form. Hence there is an apex. But even so, even in such a simple case, this summit doesn’t form the ‘source’ or ‘principle’ from which all power derives” (Foucault, 1980c: 159). According to Foucault, power is a process involving a complex network affecting all areas of life. He clearly states that power is not a commodity which can be possessed by specific individuals. Mechanisms, techniques and procedures of power, such as those involved in the emergence of a disciplinary grid that contains networks of power, are the key elements in the study of power (Foucault, 1980b). Foucault argues that when looking at power it is more important to examine knowledge than to examine institutions since the power over thought is essential (Foucault, 1980b; Hale, 1990; Smart, 1989).

One of the key principles in Foucault’s study of power and knowledge is that they cannot be separated (Foucault, 1980b; Gordon, 1980; Schissel and Mahood, 1996). Relations of power require discourses of knowledge in order to exert power. Foucault argues that this exertion of power may be accomplished through various, formal and

informal, techniques and practices that are utilized to govern individuals in society or to make them govern themselves (Dean, 1999; Foucault, 1980b; Gordon, 1980). The institutionalization of certain risk management techniques is one of the areas where power is being exerted through government practices and it will be explored in a later section of this chapter.

In his examination of the concept of truth, Foucault refers to the rules and regulations which serve to separate truth and falsehood. Foucault then explores discourses that claim to provide truth and analyses the power that is attached to these discourses. For example, discourses that claim to be scientific tend to be very influential since they are seen as having more value than other discourses. The legal system also has its own set of discourses and techniques that have a claim to truth even though mistakes may be made by the system. The power of the legal system can be seen through the judicial knowledge on which law bases its judgements while other knowledge is disqualified or omitted. To be accepted by the legal system, an individual's everyday experience must be transformed into a version that is acceptable to the system or that is legally relevant (Smart, 1989). The following section defines two key terms in the study of governmentality.

GOVERNMENTALITY DEFINITIONS

Government

According to Gordon (1991), the term government as employed by Foucault can take two distinct forms. The first form defines government in broad terms and could

include for example, the government of the self or the government of the family. The second form of the term government is more narrowly defined and refers specifically to the political government (Gordon, 1991; Rose, 1996). Expanding on Foucault's general definition of government as 'conduct of conduct', Dean (1999) states that:

Government is any more or less calculated and rational activity, undertaken by a multiplicity of authorities and agencies, employing a variety of techniques and forms of knowledge, that seeks to shape conduct by working through our desires, aspirations, interests and beliefs, for definite but shifting ends and with a diverse set of relatively unpredictable consequences, effects and outcomes (Dean, 1999: 11).

According to this definition, government is simply an attempt to shape human conduct through a form of merger of government and the public (Dean, 1999).

Public inquiries can be seen as an example of how the state attempts to incorporate the public in the process of governing. For example, based on public consultation, an inquiry may highlight certain definitions of situations and types of knowledge which affect interests, beliefs and perceptions of rationality in society. This type of governing not only aspires to rationality but also needs to insure that criteria of rationality are commonly shared by individuals and groups in society. The concept of rationality contained in the above definition of government implies that government through various techniques and knowledge seeks to shape human conduct based on a shared definition of how things are or how things should be and the changes that are required. In rationally attempting to shape human conduct there is an assumption of morality of government in that the government believes that it acts in the best interest of the society. For example, government moulds the process of selection of specific types of

knowledge that pass the test of rationality and can be utilized to regulate certain areas in order to affect human conduct (Dean, 1996; Dean, 1999). The following subsection defines the term governmentality.

Governmentality

As with his other theoretical concepts, Foucault approached and elaborated the term governmentality through a historical analysis. In his historical analysis Foucault identifies three periods that simultaneously represent specific forms of government and are sites of subsequent transformations. Although Foucault presents a chronology of three forms of government, it is important to understand that these forms of government may be present together and change in response to transformations in society. With respect to the first period he uses the term “advice to the prince” - it is derived from a set of treatises during the Middle Ages and classical antiquity, best exemplified by Machiavelli’s *The Prince*. In this period, government is external in relation to the population in that the prince has the power and he owns both the territory and the people. The primary objective in this form of government is to sustain the power of the prince over the territory with its population. The second period spans from the middle of the sixteenth century to the end of the eighteenth century and is marked by the emergence of the “art of government”. During this phase the government is expected to act on behalf of the population and it realizes that the people have diverse needs that must be taken into consideration. In this period the government is still external and can be described as paternalistic. The example of a father as the head of the household taking care of his family and making the decisions helps to illustrate the paternalistic nature of the “art of

government". The third period which emerged after the eighteenth century is the political form of government or the governmentalization of the state. In this period, the government is no longer external to the population in that the act of governing and individuals become inseparable. This can be seen through individuals governing themselves and the act of governing through individuals (Foucault, 1991a).

Governmentality, according to Foucault, refers to the following three elements:

1. The ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target population, as its principal form of knowledge political economy, and as its essential technical means apparatus of security.
2. The tendency which, over a long period and throughout the West, has steadily led towards the pre-eminence over all other forms (sovereignty, discipline, etc.) of this type of power which may be termed government, resulting, on the one hand, in the formation of a whole series of specific governmental apparatuses, and, on the other, in the development of a whole complex of *savoirs*.
3. The process, or rather the result of the process, through which the state of justice of the Middle Ages, transformed into the administrative state during the fifteenth and sixteenth centuries, gradually becomes 'governmentalized' (Foucault, 1991a: 102-103).

Governmentality also refers to the way in which individuals become part of governing and absorb the mentalities or rationalities of government. These rationalities tend to be taken for granted and in modern, liberal societies they are backed by knowledge derived from human sciences like economics, psychology and medicine. The technologies of governing the self exemplify a technique that is part of governing which involves individuals governing themselves through their connections to others. In modern society, this involves individuals monitoring themselves and making changes to

become consistent with accepted norms (Bernauer and Mahon, 1994; Davidson, 1994).

An important task in the study of governmentality is to examine thought which is generated through and embedded in practices of governing. Dean applies the term “regimes of government” to describe both the practices that are utilized to govern individuals and the practices individuals use to govern themselves. These practices include ways of producing truth and knowledge and they “comprise multiple forms of practical, technical and calculative rationality” (Dean, 1999: 18). Practices of government cannot be understood apart from collective mentalities that make certain forms of thought possible or automatically accepted. According to Dean, regimes of government can be best scrutinized through a perspective he calls “analytics of government”. An analytics of government postulates the examination of the conditions which exist when a particular practice in a regime of government emerges and how the practices within the regime are sustained and changed. Knowledge and expertise from disciplines such as law and science play a central role in these processes (Dean, 1999: 20-22). The next section outlines key elements that are needed in an analytics of government.

AN ANALYTICS OF GOVERNMENT

An analytics of government perspective, as described by Dean (1999), appears applicable to the study of public inquiries. His compilation of key points on how this type of analysis can be conducted may provide useful guidelines. The first is to identify and study a specific situation of problematization - a situation where the activity of

governing is being questioned. A problematization refers to an event that occurs at a particular time and place, in a specific context. In my research, the Westray Mine disaster and its aftermath, including the public inquiry, may be seen as such a problematizing situation. In the examination of the identified problematization, it is important to observe the context of the situation that has provoked it, including the conduct of both the governors and the governed. It is also important to keep in mind that in some cases a clear-cut distinction between the governors and the governed may not be viable. What is important, however, is that: "Problematizations are made on the basis of particular regimes of practices of government, with particular techniques, language, grids of analysis and evaluation, forms of knowledge and expertise" (Dean, 1999: 28). The specific problematizing questions are conditioned by the existing framework of governing and help to uncover it.

In this type of analysis, researchers are encouraged to pose "how" questions pertaining to governing. Through answering these questions researchers will begin to develop a list of the practices of governing, understood as conduct of conduct, in a selected domain (for instance, in the area of management of industrial safety). In the study of the Westray Mine Public Inquiry, researchers using this framework may ask questions about how the inquiry is conducted, including the various rules and regulations governing the commission, its rationale, terms of reference, etc. Then, it is necessary to examine the knowledge, expertise, types of rationality and criteria of truth that are used in the investigation and assessment of the various government practices involved. This helps to reveal diverse and heterogeneous components assembled together in the form of

regimes of practices that render particular domains governable. These government practices are seen as regimes since they are composed of historically heterogeneous elements that are linked together by certain logic and patterns of thought.

Regimes of practices can be examined through four key axes as outlined by Dean (1999: 30-33). The first axis of analysis involves identifying the fields that are governed and connecting the identified practices with forms of visibility. It is important to study the ways through which some aspects of governing are made visible and others are hidden. The second axis of analysis refers to the technologies of government which include procedures, techniques, discourses and instruments of governing. The third axis involves analyzing the forms of thought, knowledge and rationality that affect governing as well as those that are produced by it. For example, “the ‘neo-liberal’ critique of the welfare state is not first an attack on specific institutions but is a problematization of certain ideas of government, diagrams of citizenship, and the formulas of rule they generate” (Dean, 1999: 32). The fourth axis in the examination of regimes of practices refers to the identities that are created through governing, their statuses and attributes, their transformations and their role in governing. For example, an individual shopping at a store is made to identify as a consumer (Dean, 1999), while individuals testifying in the inquiry are expected to experience themselves as miners, experts, etc.

An analytics of government framework as outlined in this section can be also applied to the study of risk and risk management. The next section of this chapter examines the concept of risk and the related risk techniques that have been used to govern individuals and populations.

RISK

Governments have developed and implemented various techniques to minimize or control risks to the population, such as accidents and illness. In this context, risk can be defined as a process in which reality is ordered in a particular calculable construct. The construction of risk as calculable means that goals can be defined and techniques implemented to govern actions of individuals and populations in the desired manner. Risk based techniques are very powerful tools since they involve acting indirectly on the individual through changes in the physical and social aspects of an individual's life (Dean, 1999; O'Malley, 1992; O'Malley, 1996). In the study of risk it is important to examine how risk is calculated and what types of intervention, including regimes of practices, are created in response to the identified risks. According to Dean, in the study of risk it is essential to examine:

. . . the forms of knowledge that make it thinkable, such as statistics, sociology, epidemiology, management and accounting; the technologies that discover it, from the calculus of probabilities to the interview; the technologies that seek to govern it, including risk screening, case management, social insurance and situational crime prevention; and the political rationalities and programmes that deploy it, from those that dreamt of a welfare state to those that imagined an advanced liberal society of prudential individuals and communities (Dean, 1999: 178).

Sociology and the analytics of government provide two distinct approaches to an analysis of risk. Sociological approach to risk has often involved the identification of "risk societies" which are populations marked by what is described as "*real*" risks. Dean refers to the work of Ulrich Beck who analyzes risk in relation to two historical phases of modernization. He identifies the first phase as the classical modernization phase that

witnessed the emergence of the calculation and knowledge of risk. Scientific knowledge is relied on in the development of a calculus of risk understood as a side effect of industrialization and production of wealth. The second phase is the contemporary modernization (or “modernization of modernization”) phase that questions scientific knowledge and tends to view it as a source of incalculable risks. Ulrich Beck, who is a leading scholar in the sociological analysis of risk societies, believes the calculation of risk in society has now become impossible. In supporting this argument he points to rising dangers in (post)industrial production that may lead to global disasters which are unpredictable and whose widespread effects are difficult to imagine in terms of calculation (Dean, 1999).

The analytics of government perspective adopts a different approach to the examination of risk. The proponents of this perspective contend that risk is *constructed* as calculable by the practices, techniques and rationalities used in governing. In this type of analysis, risk may be situated in a discussion of the insurance implementation technique which conceptualizes and calculates various risks in society. Insurance is premised on statistics which estimate the probability of a specific event occurring and a contract that uses these estimates to assign specific monetary responsibilities to the insurers and the insured. Workers’ compensation is an example of an insurance system where injured workers are paid a specific amount based on statistical calculations. To qualify, however, they have to prove that they adhered to certain standards of prudent behaviour. Insurance can therefore be understood as an example of governing practice whereby an indirect influence is exerted on individuals to make them conduct themselves

in a certain way. Definitions of risk structure social reality and render it governable. The creation of workers' compensation has replaced unstructured conflicts between the employee and the employer in cases of injuries sustained at work. The insurance system creates a way for all individuals in the group to develop a sense of security since the insurance will support those who may need assistance in the future (Dean, 1999; O'Malley, 1992; O'Malley, 1996). The calculations of risk and insurance are viewed as technical solutions used as a form of relief to individuals. Insurance is one risk-related practice, other practices of risk calculation and management include epidemiological and case-management approaches to risk (Dean, 1999).

In cases of disasters described as incalculable by the sociological approach to risk, some scholars utilizing the analytics of government framework have identified the emergence of comprehensive risk-management strategies. Examples of comprehensive risk-management strategies include educational techniques for explaining risk, the implementation of training programs, and the creation of emergency plans (Dean, 1999). O'Malley (1992,1996) and Dean (1999) argue that there has been a movement from socialized risk management to placing responsibility on individuals to be prudent, that is to manage their own risks.

The analytics of government framework in the study of risk is applicable to the Westray Mine disaster through the various questions and discussions pertaining to the risk management strategies and calculations implemented by the corporation and government agencies and the actions or inactions of individuals in relation to the disaster. These discussions can be found in the Inquiry report by Richard (1997) and the

corresponding transcripts. Risk rationalities are components of reflexive government, the subject of the following section.

REFLEXIVE GOVERNMENT

Reflexive government is a term that has been developed to exemplify some aspects of the process of the governmentalization of the liberal/welfare government and can be defined as the process through which the state government redefines itself in response to broader changes over which it has no control. Reflexive government reforms itself by reducing its direct forms of governing and relying more on market-based mechanisms whereby rational actors are guided to make rational choices. In addition to transferring some of its functions to the private sector, it also reorganizes its own agencies along the lines more in keeping with market rationality. According to Dean:

The imperative of reflexive government is to render governmental institutions and mechanisms, including those of the social itself, efficient, accountable, transparent and democratic by the employment of technologies of performance such as the various forms of auditing and the financial instruments of accounting, by the devolution of budgets, and by the establishment of calculating individuals and calculable spaces (Dean, 1999: 193).

Public inquiries can be seen as an example of reflexive government since they constitute an independent, public attempt to hear from different groups of individuals and work out a rational way of transforming governing mechanisms in a specific area (Ashenden, 1996; Dean, 1999). An inquiry may be held when a crisis is declared and a state of “normality” is desired. Its definition will depend on the prevailing risk and choice rationalities. To reach an acceptable definition of normality, various participants

contribute to the inquiry, including “experts” from disciplines such as science and law.

As shown in chapter 2, Ashenden (1996) used the Cleveland Inquiry into child abuse to illustrate how public inquiries constitute a form of reflexive government. In her analysis of the inquiry, she examines the role of the private/public distinction in relation to the debate over state involvement in the family in child abuse cases. This debate can be seen through the conflicting beliefs that the state has to protect children and respect the family’s right to privacy. In the analysis of the Westray Mine Public Inquiry, the private/public distinction is also important. It may be examined through the way the Inquiry addresses the contemporary nexus of state-business relations and the issues of governability of industrial relations as characterized by an advanced liberal state rationality (Ashenden, 1996: 64-65). For example, this distinction may be traced in discussions of the role of the state in providing assistance to private companies or in regulating private companies. The private/public distinction in relation to state intervention can be utilized by both dominant groups and those opposed to them.

In her analysis of the Cleveland Inquiry, Ashenden specifically examines the scientific and legal knowledge that is presented in the inquiry. According to her, there are two types of arguments that typically emerge in child abuse cases. The first type of argument does not question accepted knowledge but focuses instead on issues such as training of practitioners and resources available to them. The second type of argument questions the accepted knowledge and the rationality behind accepted practices. These two types of argument noted by Ashenden (1996) are not limited to child abuse cases and can be found in inquiries which examine different topics. For example, the arguments

contained in inquiries pertaining to industrial disasters could focus mainly on issues such as worker training programs or resources or they could question the currently accepted laws, scientific practices and risk calculations related to the industry.

Claims made by experts provide the rationality that is necessary for the state to govern. Scientific discourses for example, are a key element in public inquiries since they claim to be a form of truth or expertise which can furnish legal discourses with the legitimation needed to intervene. Inquiries require scientific and other forms of expert knowledge in order to formulate their decisions. According to Ashenden, when problems arise in scientific knowledge they are reduced to procedural errors or errors created by specific experts but the validity of the scientific knowledge is not questioned. By reducing problems with scientific knowledge to these specific errors, the concept of expertise can be accepted. This process reinforces the idea of expertise as possessing truth and solutions to problems in society (Ashenden, 1996).

The public nature of inquiries and the inclusion of various affected or interested groups incorporates the broader public in the process of governing. According to Rose (1996), technologies of government are utilized by various individuals in the forms of strategies, techniques and procedures in an attempt to have their views incorporated into government. He argues that state power stems from these diverse participants attempting to improve government. Public inquiries provide a forum where participants use a variety of strategies, techniques and procedures to convey their views to the government and influence governing practices (Rose, 1996).

CORPORATIONS AND NEO-LIBERALISM

The subject matter of an inquiry is likely to have some impact on its organizational structure and conduct. In the examination of the Westray Mine Inquiry, the normative context related to corporate wrongdoing needs to be explored. Laureen Snider (2000: 172) contends that there has been a disappearance of corporate crime in North America during the 1980s and the 1990s “through decriminalization (the repeal of criminal law), through deregulation (the repeal of all state law, criminal, civil and administrative) and through downsizing (the destruction of the state’s enforcement capability)”. She writes that an example of this process can be seen in Canada with the replacement in 1986 of the *Combines Investigation Act* with the *Competition Act*, which involved removal of criminal law, deregulation, and downsizing related to the adoption of the voluntary ‘compliance-centered’ approach with respect to mergers and monopolies (Snider, 2000: 173). According to Snider, these processes are evident in relation to financial crimes, as well as social crimes that include crimes against the environment and occupational health and safety violations. She argues that these trends, prominent in the 1980s and 1990s in Canada, have followed practices implemented in the United States since 1979.

In explaining the neoliberal rationality behind these developments, Snider contends that when knowledge production is market-based, knowledge claims in support of vested interests are more readily endorsed as truth by influential elites than claims contrary to these interests. When dominant interest groups, such as wealthy corporations, fund scientific studies, they have the power to ask certain questions and control the

production of knowledge. For example, interested corporations may fund studies which scientifically “prove” that global warming does not exist. By producing such knowledge, they are able to lobby for decriminalization of specific environmental laws, deregulation of the control over fossil fuel emissions and downsizing of corresponding regulatory agencies. The knowledge shaped by the dominant interests is called hegemonic when it becomes accepted as “common sense”. Although “counter-hegemonic claims” or claims opposed to the dominant interest groups may eventually become accepted, it may be a difficult and prolonged process. So far, however, there has been very little resistance to knowledge claims that fueled the trend of the “disappearance of corporate crime” (Snider, 2000: 181).

According to Snider (2000), there has been an historical change in the relationship between corporations and the government which has contributed to the trend towards the disappearance of corporate crime. In the past, incorporation was approved by the government for a fee, which is distinctly different from the present situation where corporations “are considered to be doing government a favour merely by setting up shop” (Snider, 2000: 171). This change can be attributed to the prominence of the neo-liberal economic theory. Neo-liberal economics, which displaces Keynesian economic theory, is based on an idea that to have an efficient market, there should be the barest minimum of government intervention. This is different from Keynesian economics and liberalism which calls for the state to aggressively intervene and care for the society (Dean, 1999; Snider, 2000). Proponents of neo-liberal economics argue “that market systems can only operate at maximum efficiency when there are no artificial barriers such as government

regulations, tariffs or subsidies, to impede them. Markets must be 'set free' to follow their internal logic, which is profit maximization" (Snider, 2000: 182). According to the neo-liberal perspective, corporations are independent and are no longer accountable to the state. The weakening of the concept of corporate crime was made possible primarily through the acceptance of neo-liberalism and the return to traditional philosophies such as the belief that many incidents that might be considered as due to "corporate crimes" are better understood as "accidents". Legal objections to the concept of corporate crime including the argument that criminal law is ineffective with respect to corporate crime, have also played an important role. Advocates of this movement have often used statistical analyses to back their criticisms of regulations restraining business and to strengthen their arguments for free operation of the market (Pearce and Snider, 1995; Snider, 2000).

There has also been a trend for corporations to become global and operate throughout the world which makes regulation increasingly difficult. According to Pearce and Snider (1995), the emergence of these type of corporations, is in large part due to technology, the 1980s' corporate takeovers and free trade policies. This trend has been identified by researchers as an issue that needs to be examined, and which calls for development of new regulatory initiatives. Since governments want corporations to stay in their area, it is increasingly difficult for them to impose regulation in the situation where the company has the option to relocate if it does not agree with the regulations (Pearce and Snider, 1995; Snider, 2000). According to Snider (2000: 189), the ideology of globalization and free trade have "allowed nation-states to justify deregulation by

arguing they no longer have the authority to regulate”.

This section contains the argument put forth by Snider (2000) that there is a trend in which corporate crime is “disappearing”. This is important to the study of the Westray Mine in that all criminal charges in this particular case were dropped and criminal liability could not be part of the Inquiry discourse. The reliance on a public inquiry as a major forum for addressing a crisis brought about by the explosion shifted the focus from alleged corporate crimes to possible failures of governance, this could be governance of the Westray mine or broader issues of mine regulation and employment.

CONCLUSION

The intention of this chapter was not to present a comprehensive review of the governmentality literature, but rather to focus on specific themes and concepts that seemed to be relevant to this thesis. I argue that the governmentality framework as outlined in this chapter can be helpful in formulating research questions for the study of the Westray Mine Public Inquiry and that an analytics of government approach can provide useful research guidelines. According to these guidelines, an area or a moment of problematization needs to be identified to help focus our investigation. For this thesis, the Westray Mine Public Inquiry itself can be identified as a forum of problematization. Then, the context of the inquiry needs to be described which includes for example, an examination of the formal and informal rules governing an inquiry. A description of the inquiry must also contain the roles of the participants and the techniques they implement in playing those roles. For example, specific examiners may pose certain types of

questions in order to bring the issues that they view as relevant to the forefront and they may use certain types of knowledge and discourse to put forth their views. The focus of this thesis is not the social construction of the Westray Mine disaster, but the Inquiry itself and what it reveals about our governing mentality. It is a study of the discourse and practices of an Inquiry and not the process of claims-making as understood within the constructionist tradition. The claims are of interest only insofar as they help to reveal the mentality and style of governing within a contemporary society. The focus is on their form and underlying strategies rather than on their actual contents and their contribution to a constructed understanding of what happened in the Westray Mine.

The concept of risk is also important to the study of the Westray Mine Public Inquiry through an analytics of government framework. Given that mechanisms of risk-taking and risk-control are important aspects of governing in modern society, the case study should scrutinize risk management strategies discussed and recommended or rejected by the Inquiry. It should also look for underlying notions of individual responsibility, choice, risk-taking, risk-calculation and other concepts that may be employed in defining normal and abnormal conditions in mining industry. In identifying the themes of risk in the Inquiry it is important to establish which participants are putting forth specific types of arguments in order to establish patterns in their discourse. It is also important to trace the influence of these discourses and their different rationalities on the outcome of the inquiry.

Public inquiries are an example of reflexive government since they are able to make recommendations for changes in the governing style in response to some external

developments that disrupt routine government practices. These recommendations resulting from public inquiries may involve a reassessment of the public/private distinction when referring to state involvement in the private sphere such as the family or private companies. In the case of the Westray Mine Inquiry, one of the possible areas of problematization is the role of provincial and federal governments in financing, regulating and monitoring the mining industry.

Inquiry recommendations are typically based on the participation of various individuals representing a diverse range of views. According to Ashenden (1996), scientific and legal discourses play a particularly important role in the presentation and acceptance of concepts. In the Westray Mine Public Inquiry, various scientific experts including mine engineers, ventilation experts, explosive experts and geologists testified and provided the Inquiry with specialized knowledge which was then used in the formulation of recommendations. It will be important to scrutinize the place and role of these knowledges in defining such key concepts as acceptable risks, responsibility and rationality of action.

Finally, the discussion of neo-liberalism provides current information on the social change which is affecting business environments and contributing to the “disappearance” of corporate crimes (Snider, 2000). This is important to the study of the Westray Mine Inquiry in that I will be able to observe how the role of the Inquiry may be affected by these social changes. Given that all criminal charges related to the Westray explosion were eventually dropped, the Inquiry, whose mandate excludes considerations of criminal responsibility, became the main forum for public scrutiny of that disaster.

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CHAPTER 4

METHODOLOGICAL FRAMEWORK

The primary focus of this thesis is to examine public inquiries as a method of governing. The Westray Mine Inquiry has been chosen for a more detailed case study and this chapter discusses the general methodological framework and specific research methods that have been selected. In the first section, the documents that have been selected for analysis are described. These documents include the Westray Mine Public Inquiry report by the commissioner, Justice Richard (1997) and a sample of the testimonies given at the Inquiry hearings. The following section describes the methodological approach used in the analysis and includes: Michel Foucault's conceptualization of discourse analysis, guidelines for empirical discourse analysis, critical discourse analysis, and conversational analysis as applied to courtroom proceedings. The next two sections in this chapter contain the major categories and specific questions that will be used in coding and analyzing the selected sample of the testimonies. In the final section, there is a brief description of the technical coding methods that will be used in this project.

SOURCES OF DATA

The documents that have been selected for analysis are the *Report of the Westray Mine Public Inquiry* (Richard, 1997) and a sample of the testimonies given at the Inquiry hearings. The Inquiry report by Richard (1997) is a public document which contains four volumes totaling 895 pages. The first volume is divided into two parts: the prelude to the explosion and the explosion itself. In the prelude to the explosion part, Justice Richard, examines: the history of coal mining in Pictou County; the development, organization and management of Westray; and a description of the training program and working conditions at Westray. The second part describing the explosion provides an analysis of the ventilation system, methane levels, coal dust accumulation, and ground control. Volume two is divided into parts three through five. Part three examines the relevant legislation and names government departments responsible for regulating mines in the province of Nova Scotia, including the Department of Natural Resources, the Department of Labor, politicians and government Ministers. The fourth part examines what happened after the explosion at Westray, which encompasses the rescue attempt and the production of the Inquiry. The fifth part of the Inquiry contains concluding remarks, the consolidated findings and the consolidated recommendations. The third volume of the Inquiry report is a reference document containing a glossary, abbreviations, units of measurement, photographs and maps. The fourth volume is the executive summary of the Inquiry.

The testimonies given at the Inquiry are accessible on the internet at the Saint Francis Xavier University Westray Collection website. There were 77 days of testimony

resulting in almost 17 000 pages of transcripts, contained in 77 volumes. The transcripts of the Inquiry include opening remarks, testimony from 71 witnesses, the oral submissions provided by eight different groups and the final comments. The head of the hearings and the Inquiry was Justice Richard, the Commissioner. At the hearings, solicitors John Merrick and Jocelyn Campbell represented the Inquiry commission and constitute the Inquiry Commission Counsel. Applications were submitted to the Inquiry commission on June 29 and 30, 1992 by individuals or groups requesting status and/or funding to participate in the Inquiry (the list of the parties with status at the Inquiry and the individuals who represent each group is presented in Appendix A). During the hearings, the Inquiry Commission Counsel, the commissioner and parties with status were given the opportunity to ask questions. Although parties with status had limited ability to examine witnesses, they were also permitted to give an oral submission and to consult with the Inquiry counsel to make suggestions.

In his opening comments at the hearings, Justice Richard stated that the Inquiry was investigatory in nature. In an attempt to avoid surprises at the hearings, parties were required to bring relevant information to the Inquiry counsel before testifying and all documents were given to all parties before the hearings. In order to avoid repetition at the hearings, interviews were held with the witnesses before the hearings and then specific witnesses were selected to testify. This selection process for witnesses testifying at the Inquiry was used in the selection of 30 Westray miners and draegermen out of the 120 that were interviewed (Richard, 1997).

Due to the large size of the testimony transcripts and the qualitative methodology

that has been chosen for this thesis, it was necessary to select a sample of the testimonies to analyze. It was also important to ensure that testimonies from a variety of individuals were included in the sample such as miners, politicians and experts. Typically, the first step in this process would be to develop categories in which to place the witnesses, but since the individuals testifying at the Inquiry testified in a specified order according to their role in the Westray Mine, a list was readily available. The list of the individuals in the order in which they testified at the hearing was used with a slight modification. On a few occasions, an individual testified more than once at the hearings, so in this case the first time the individual's name appeared on the list was kept and the other times that his or her name appeared was deleted. If the person's name was selected to be part of the sample, all of the days he or she testified would be included for analysis. After the final list was developed, a systematic sampling technique was used in which every 4th name on the list was selected to be part of the sample (Babbie, 1995). After a systematic coding and analysis of the sample of testimonies, I decided that two of the testimonies, Alan Craven (Vice President and General Manager of Associated Mining Consultants Limited) and Robert Naylor (Coal Geologist with NS Department of Natural Resources) would not be included in the analysis as they did not contribute anything significantly different than the other testimonies. The full text of the *Report of the Westray Mine Public Inquiry* by Richard (1997) has been read and will be used in the analysis of the transcripts and in Chapter 5 as a source of background information about the Westray Mine and coal mining in general. The final recommendations contained in the executive summary of the Westray Mine Inquiry report will be analyzed based on the general list of issues

developed later in this chapter.

METHODOLOGICAL FRAMEWORK

Michel Foucault and the Study of Discourse

According to Foucault (1980b: 93), relations of power cannot exist without discourses of truth. In his study of discourse, Foucault examines the rules which govern the production of discourses which are considered to be truthful and the power that is needed to produce discourses of truth. He argues that truth is not separate from power and that truth emerges from various constraints in society. Every society has a *regime of truth* or discourses that the society accepts as truth (Foucault, 1980a: 131).

In his analysis of discourse Foucault focuses on “the law of *existence* of statements, that which rendered them possible - them and none other in their place: the conditions of their singular emergence; their correlation with other previous or simultaneous events, discursive or otherwise” (Foucault, 1991b: 59). In other words, he explores the conditions through which statements are made possible. Foucault calls this type of an analysis an archaeology in that he examines the rules from the specific period and society where the discourse emerged. He describes five key elements which aid in the identification and analysis of the rules governing discourse. The first element is the examination of the *sayable* or what can be stated, including its limitations and forms. The second element refers to the analysis of how certain forms of discourse are *conserved* while others may be dropped or repressed. The third element involves an inquiry into what type of discourse is considered valid and what is considered invalid. The fourth

element refers to the *reactivation* of discourses or an exploration to determine which past or foreign discourses are valued, imported, reconstituted or retained. The fifth element is the *appropriation* of the discourse revealed through an examination of the individuals or groups which have access to the specific discourse, struggle over it or control it (Foucault, 1991b: 59-60).

In studying discourse, Foucault is essentially concerned with the analysis of the exteriority of the discourse. He states that discourse analysts need to examine discourse as a *monument* not as a commentary, to analyse the conditions in which discourse emerges and explore the field in which the discourse exists. Foucault argues that discourse has distinct limits, rules and boundaries. He writes that “discourse is constituted by the difference between what one could say correctly at one period (under the rules of grammar and logic) and what is actually said” (Foucault, 1991b: 61). It is these utterances or what is said and the transformations of them that Foucault is interested in studying.

Michel Foucault’s conceptualization of discourse will be useful in the analysis of the Westray Mine Inquiry documents which have been selected for analysis in this study. In my thesis I will explore how power relations and discourses of truth govern the production of discourse in the Westray Mine Inquiry. This may be evident through the acceptance or rejection of specific forms of knowledge in the discourse. The framework for studying the rules of discourse, outlined by Foucault, including the five key elements, will be used in this thesis to analyze the rules governing the production of discourse and how utterances or statements are made possible in the Inquiry.

Guidelines for Empirical Discourse Analysis

Discourse analysts stress the importance of looking at “whose language, whose literature, whose arts, whose history, whose bodies, whose minds, or whose technology (are being studied), and especially: in whose interests” (van Dijk, 1988:290). According to Parker (1992), discourse constructs an event through statements which describe and categorize. Van Dijk (1990) states that discourse analysis has two main dimensions, the textual and the contextual. The textual dimension involves looking at the text and offering levels of description, similar to qualitative content analysis while the contextual dimension involves relating texts to the social world (van Dijk, 1990). While the latter type of discourse analysis has been selected for this thesis, some elements of the qualitative content analysis will also be present because the two dimensions are often difficult to separate. In my examination of the data, I will attempt “to find the rules or principles underlying the structures, the production and the comprehension” of the discourse (van Dijk, 1983: 27).

However, the language use dimension of the discourse analysis of the Inquiry transcripts will also include an examination of the language used by specific individuals or their style of speaking (van Dijk, 1983, 1997a). Meanings and rules of usage of specific words are social and therefore may be linked to specific groups of individuals in their testimonies. Individuals at the Inquiry may try or be encouraged to adapt their language to the prevailing discourse of the Inquiry. The same applies to various types of knowledge, for example, scientific knowledge, bureaucratic knowledge or experience-

based knowledge. Appendix D, on Statutory Powers, Rules and Regulations Governing Public Inquiries, will help to identify the formal rules governing inquiry hearings with respect to language use such as the order in which participants may speak and the manner in which they may be questioned and addressed.

In the following quotation van Dijk outlines how discourse analysis may be used in the social sciences:

For social scientists, discourse analysis stresses that social and political institutions, organizations, group relations, structures, processes, routines, and many other relevant phenomena, also need to be studied at the level of their actual manifestations, expressions or enactment in discourse as language use, communication and interaction (van Dijk, 1997a: 32).

According to van Dijk, the following four concepts can be used to aid in the empirical analysis of discourse: action, context, power and ideology. The first concept, discourse as action, refers to the idea that participation in discourse is typically a behaviour that exhibits control and intent but is not necessarily interpreted in the way that the speaker intended. According to van Dijk's conceptualization, context can be defined "as the structure of those properties of the social situation that are systematically (that is, not incidentally) *relevant* for discourse" (van Dijk, 1997b: 11). Examples of the context of discourse may include a description of the participants, the setting, and the rules governing the talk. The third concept is power, more specifically, "*social* power defined as a specific *relation between social groups* or institutions" (van Dijk, 1997b: 17). Power may be exerted through discourse in the form of a direct comment, persuasion, ability to express views or control over certain aspects of the discourse such as topics. In keeping with Foucault's conceptualization of power, it is crucial to understand that it is not a

simple relationship where powerful groups exert control over the less powerful, rather, power in discourse can be exerted by various groups and in various ways. Ideology is the fourth concept identified by van Dijk (1997b) and can be described as ideas or knowledge shared by groups in society. Through the formation of the dominant discourse, ideologies are shared and expressed by group members in both direct and indirect forms. Ideologies are not always expressed in a direct way, for example, an ideological view may be expressed through a story (van Dijk, 1997b). Although Foucault (1980a:118) rejected the concept of ideology as alien to his theory, van Dijk's use of it is somewhat similar to Foucault's concept of "historically definite discursive systems" (1991b: 62) that make possible certain types of discourse.

Critical Discourse Analysis

One current in discourse studies is critical discourse analysis which examines discourse in relation to power structures in society (Caldas-Coulthard and Coulthard, 1996). Some critical discourse analysts examine how text is produced, for example, scholars studying the media may examine the newspaper industry and the production of articles. In my research, I focus on the production of a public inquiry, the structure and dynamics of the hearings, the mechanisms of the selection of views to be represented or omitted within the final Inquiry recommendations (Fairclough, 1995; Smith, 1990; van Dijk, 1990).

Conversational Analysis and Courtroom Proceedings

A different approach to studying communication is represented by conversational analysis. It can be characterized as "an attempt to describe people's methods for

producing orderly social interaction” (Silverman, 1993: 120). According to Pomerantz and Fehr (1997) there are five key tools that can be utilized in conducting a conversational analysis. The first tool is to identify a sequence to analyse which consists of a section of text containing dialogue pertaining to a specific topic. The second tool of analysis is to characterize the action or what is happening in the conversation. For example, a person may be disagreeing, telling a story or asking questions. The third tool is to identify the way in which each individual “packages” the action or how specific individuals deliver the information in their utterances (Pomerantz and Fehr, 1997: 72). An examination of the timing and taking turns is the fourth tool of analysis and it involves looking for things such as how individuals obtain a chance to speak, interruptions, gaps, how the turn ends, and how the subsequent speaker is selected in the dialogue. The final tool of analysis consists of observing “how the ways the actions were accomplished implicate certain identities, roles and/or relationships for the interactants” (Pomerantz and Fehr, 1997: 74). The authors suggest that these tools of analysis can be used to study all types of conversations (Pomerantz and Fehr, 1997).

Since this thesis involves the analysis of transcribed inquiry hearings, elements of the conversational analysis used in the study of transcribed court proceedings can be potentially incorporated into the methodology for this thesis (Wilkinson, 1981). In order to use conversational analysis in court hearings, the transcripts must be viewed as interactional rather than purely legalistic. If court hearings were only legalistic then individuals without legal expertise would be unable to participate. Key factors in court hearings (or inquiry hearings) are the processes involved in the production of order in

which participants are able to communicate and the exercise of control over topics that are covered. Although there are distinct rules for the order of speaking and topic control in legal forums, Wilkinson (1981) suggests that these rules may not be completely different from those present in the mundane situations of people's daily conversations. The implicit rules pertaining to who may speak at certain times and what topics may be covered can be seen as a practical solution to the potential problem of never being able to conclude the conversation. The same applies to court proceedings, although rules that govern them may be much more formal. There are two basic categories of talk in court hearings, the first is the legal procedure category which includes talk about procedural rules such as summoning witness. The second category is the mundane category of talk which primarily consists of questions and answers. The mundane category of talk may have rules embedded within it. For example, witnesses may be required to answer specific questions or they may be directed to talk about certain information and not other information (Wilkinson, 1981).

Conversational analysis of courtroom hearings includes the analysis of both the structural component of talk and how participants produce talk through their interactions. The primary concerns for researchers are "What is going on in the production of those orderly properties and why is it going on" (Wilkinson, 1981: 20). Researchers must examine how people talk and the patterns that emerge from the talk. For instance, a conversational analysis of legal discourse may include an examination of how individuals construct their utterances in such a way as to compete with or suppress other versions of events that may exist. An example of this type of practice is when in the

name of some legal priorities, witnesses are not given an opportunity to fully explain themselves and the topic is changed. When analysing courtroom data it is important to realize that utterances made by witnesses may depend on “what they have heard or said in prior testimony, what specific kind of trial it is, their position in the trial, whether they are being examined by their own counsel or cross-examined by the opposing side’s counsel, and so on” (Drew, 1985: 146).

The underlying goal of conversational analysis is to describe how individuals participate in and therefore produce conversations. Although my thesis is not concerned with identification of basic methods of production of orderly interactions, some elements of conversational analysis as outlined in this subsection can be used within Foucault’s framework of discourse analysis. Discursive practices in various fields, such as inquiry hearings, may be conditioned by basic mechanisms of communication present in mundane conversations. When analyzing the discourse in the selected documents from the Westray Mine Inquiry, it will be important to be sensitive to both the formal procedural rules governing the production of the discourse and the informal or taken for granted rules which individuals follow in their daily conversations, as outlined by the conversational analysis methodology.

MAJOR CATEGORIES FOR CODING

The development of the following categories and specific questions that have been selected for coding originates in the theoretical and methodological concepts that have been discussed in this thesis. This section presents each of the major categories by

briefly stating relevant methodological and theoretical concepts and then generating specific questions that will be used for coding and analytical purposes.

Key Players

In the analysis of the Inquiry hearings, it is important to examine the key players which include the examiners, the witnesses and the commissioner. Each group requires a further description, for example when analyzing the examiners it is necessary to identify who the examiners represent, their main line of questioning, and the way the specific examiners question witnesses including the framing of questions and responses as well as the expectations they may have of other individuals or groups.

Inquiries and Problematization

Inquiries are typically conducted to respond to a problematization or a situation where the activity of governing is questioned; they further the process of problematization. Public inquiries can be viewed as having two functions, they are a strategy or process of government and they are a way to review or reform government practices. Inquiries are a source of knowledge of governing in that they show how society is governed - through for example, legalized procedures and inclusion of various groups. In the examination of the Inquiry it will be important to determine why an inquiry is seen as a rational reaction to a problematization. More specific to the Westray Mine Inquiry, the analysis will encompass an exploration into what is being problematized, how it is problematized through the discourse and what is considered “normal”.

Rules and Regulations

One of the key categories that needs to be examined in this thesis is the operationalization of the rules and regulations within the Inquiry discourse. This is necessitated by the conceptualization of the Inquiry as a type of historically specific and historically limited discourse. It fits Foucault's definition of discourses as "limited practical domains which have their boundaries, their rules of formation, their conditions of existence" (Foucault, 1991b: 61). This approach calls for an analysis of both the formal and the informal rules which govern the Inquiry. To analyze the formal rules, it is necessary to consider the general regulations governing public inquiries as well as the rules that were established for this particular Inquiry which can be determined through the terms of reference and what is formally stated by the Inquiry commissioner. The informal rules may be subtle and may include an assumed order as well as intervention techniques or tactics used by participants. As part of the analysis it is important to determine when the rules are evoked, ignored, subverted, downplayed and terminated and to examine what effect this may have on the Inquiry.

Power and Truth

Another category that needs to be analyzed is truth and power relationships that exist within the dialogue. Foucault (1980a) contends that power cannot exist without discourses of truth and that truth cannot be separated from power. In the analysis of the public Inquiry, there will be an examination of how the search for the truth is conducted. For example, it will include an analysis of the types of knowledge that are classified as credible and truthful. This part of the analysis will also include a description of how this

is pronounced or ruled through the discourse and its rules, such as a specific ordering in the dialogue. An example of how these types of power relations may be measured is the frequency of interruptions of communications of specific individuals and who is the interrupter of the dialogue.

Discourse Style

The style of the discourse includes an identification of clusters of terms, rhetoric and the frequency of the use of terms. The use of specific terms may be established by more influential examiners or witnesses and then used by other individuals in the Inquiry. Another aspect of discourse style is identifying the methods people use to construct and legitimize or delegitimize what occurred at the Westray Mine through their discourse. For instance, an individual may hide behind the discourse through the use of “safe phrases”. Consideration must also be given to the language of the discourse, for example, does the speaker use language that most listeners would comprehend.

Risk

In the study of risk in the Inquiry, it is necessary to determine how risk is constructed as calculable or as incalculable and to determine how “acceptable” and “unacceptable” levels of risk are addressed, assumed or constructed. It is important to examine the forms of knowledge that normalize certain levels or types of risk and deem others as unjustifiable, for example, the acceptance or rejection of managing the environment through safety devices. In the analysis of the concept of risk it is critical to determine the perception of the governability of risk in the Inquiry discourse by focusing on discussions of particular practices, techniques and rationalities as well as on the final

recommendations of the Inquiry.

Private - Public Distinction

An examination of the private-public distinction in the Inquiry proceedings includes an analysis of the way the Inquiry examines the issue of private-public relations pertaining to the governability of private corporations by the state (Ashenden, 1996). In the analysis of the Inquiry, it will be determined if its discourse problematizes the relation between the private sector and state intervention and if it favours reaffirmation of the existing relation or its reformulation. This problematization may be evident in the Inquiry through statements or debates about defining the state's role in both distributing funding to corporations and intervening in the operation of corporations. In this thesis, issues such as the governability of the public/private sector relations, public/private safety concerns and types of knowledge that are used in the discourse will also be examined in the selected Inquiry documents.

LIST OF QUESTIONS FOR CODING

The following list of questions that have been developed for coding are general and open-ended as they are meant to assist in the qualitative analysis of the material. The list has been developed after a preliminary reading of several randomly selected testimonies and the text of the Inquiry report. This list is not fixed and may be modified, extended or developed further in the analysis of the data if it is discovered early in the coding process that there are key questions that are missing. If a change is made, a reexamination and recoding of the data would be necessary.

1.0 Key Players

- 1.1 How are the witnesses questioned by the examiners?
- 1.2 Who do the examiners represent? What is their main line of questioning? Are there specific patterns in the types of questions and responses of participants? If yes, describe these patterns and the circumstances under which they emerge.
- 1.3 Describe the behaviour of the witnesses. For example, is there evidence of self-censorship, fear, or any changes in their testimony in response to evidence presented to them?
- 1.4 What criteria is the categorization of witnesses based on?
- 1.5 Are there pressures to include or exclude witnesses by specific key players?
- 1.6 When does the commissioner interrupt the testimonies?

2.0 Inquiries and Problematization

- 2.1 Why is an inquiry seen as a rational reaction to problematizing?
- 2.2 What is being problematized in the discourse and how? This includes, for example, discussions about safety, attitudes towards the law, training standards, the role of politicians and mining subculture.
- 2.3 What is the vocabulary of problematization?

3.0 Rules and Regulations

- 3.1 What are the rules, terms of reference and other norms that are formally stated for this Inquiry?
- 3.2 What are the informal rules of this Inquiry? Are there assumed rules of order, types of intervention, tactics and unspoken constraints or other rules used by the

participants? Are they very different from those used in everyday conversations?

- 3.3 What are the explicit rules pertaining to who is permitted to testify?
- 3.4 What are the implicit rules pertaining to who is permitted to testify?
- 3.5 How are the rules and regulations operationalized through the discourse in the Inquiry?
- 3.6 When are they evoked?
- 3.7 When and how are rules or regulations ignored, subverted, downplayed or erased and how does this affect the Inquiry?

4.0 Power and Truth

- 4.1 In the hearing transcripts, do people interrupt each other in the dialogue? If yes, what is the frequency, by whom and who is being interrupted?
- 4.2 Is a power dimension evident in the testimonies? For example, is there evidence of hierarchies, credibility ranking or special ordering?
- 4.3 How is the search for the truth conducted? What tests or criteria of truth are used or assumed? What types or sources of knowledge are assumed or classified as credible? How is this ruled in the discourse?
- 4.4 How are certain forms of knowledge mobilized or privileged? Examples of types of knowledge may include legal, scientific, practical management or community experience. How are they used to either re-affirm or revise the underlying rationalities of governing?

5.0 Discourse Style

- 5.1 Is there evidence of specific terms being introduced by specific participants and

then being adopted by others? Are certain terms established by more influential participants and then used by others in their discourse?

- 5.2 Note any identifiable, repetitious rhetorical devices.
- 5.3 What are the methods people use to construct the events in the mine as acceptable? How do they legitimize or normalize what happened through their discourse? Do they hide behind "safe phrases"?
- 5.4 What are the methods people use to construct the events in the mine as unacceptable? How do they describe what happened through the discourse?
- 5.5 What type of language do the participants use? For example, everyday language, scientific language, legal language or specific types of jargon. Is their language accessible to most people or is it complex or hermetic?

6.0 Risk

- 6.1 How is risk constructed as calculable through the discourse?
- 6.2 How is risk constructed as incalculable through the discourse?
- 6.3 What are the forms of knowledge that make risk thinkable and governable?
- 6.4 Through which particular practices, techniques and rationalities is risk constructed as governable?
- 6.5 How are "acceptable" levels of risk addressed, assumed and constructed?
- 6.6 How are "unacceptable" levels of risk addressed, assumed and constructed?
- 6.7 What are the forms of knowledge that justify or normalize certain levels of risk?
- 6.8 What are the forms of knowledge that serve to find certain levels of

risk unjustifiable?

- 6.9 Are there patterns of risk calculation in the hearings? What is the role of probability or cost-benefit calculation?**
- 6.10 How do the miners, managers, politicians, and other key players conceptualize choice?**
- 7.0 Public-Private Distinction**
- 7.1 How do the participants address state-business relations?**
- 7.2 Do the participants address the issues of governability of industrial relations as characterized by an advanced liberal state rationality and globalization?**
- 7.3 Does the Inquiry problematize the role of state interventions (such as regulations and subsidies) in the private sector?**
- 7.4 Are there demands for reaffirmation or strengthening of state intervention?**
- 7.5 Are there demands for delegitimation or weakening of state intervention?**
- 7.6 How are the issues of the governability of state-private sector relations addressed in the Inquiry?**
- 7.7 How are the issues of public-private safety addressed in the Inquiry?**
- 7.8 How are the rationality, reasonableness and legitimacy of intervention conceptualized in the process and what sort of knowledge is seen as crucial?**
- 7.9 How are the rationality, reasonableness and legitimacy of non-intervention conceptualized in the process and what sort of knowledge is seen as crucial?**

TECHNICAL CODING INFORMATION

The list of questions that have been developed for coding will be used in examination of the testimonies. The edge coding technique will be utilized to mark the outside margin of relevant areas of the transcript with numerical codes and more detailed notes will be entered on index cards. A manual filing system has been developed to store the data in files based on the questions listed in the previous section. This system will allow for a systematic and efficient retrieval of the data for analysis (Babbie, 1995). The winMAX software package for qualitative content analysis was going to be used in this thesis, but after many attempts and consultations with computer technicians, the data could not be reformatted into the necessary text format needed to run the program. The software package was not used since entering all of the raw data into the computer would have been time consuming.

CONCLUSION

This chapter provided an outline of the research methods that were used in this thesis. The first section began with a description of the documents that have been selected for analysis and how the sample of testimonies was selected. The next section describes the general methodological approach that has been selected for this thesis, which is influenced by Foucault's framework for discourse analysis. In this section, there is also an explanation of how certain aspects of Foucault's framework will be applied in this thesis and how elements of other methodologies such as critical discourse analysis and conversational analysis will also be used within Foucault's framework to aid in the

analysis. The third section describes the themes that will be examined in my research, which have been developed from the theoretical and methodological concepts presented throughout this paper. The subsequent section presents a list of questions for coding that have been developed from the major concepts and themes elaborated earlier. In the final section, the technical coding information is briefly explained. The next chapter provides background information about the Westray Mine including an examination of academic studies and literature.

PART III: THE CASE STUDY

CHAPTER 5

THE WESTRAY MINE: BACKGROUND TO THE DISASTER

The Westray Mine explosion, that occurred on May 9, 1992 in Pictou County, Nova Scotia led to the death of twenty-six miners and has been linked to gross corporate violations. Justice K. Peter Richard (1997) makes the following comment about the disaster in the Westray Mine Public Inquiry report:

It is a story of incompetence, of mismanagement, of bureaucratic bungling, of deceit, of ruthlessness, of cover-up, of apathy, of expediency, and of cynical indifference. It is a tragic story, with the inevitable moments of pathos and heroism. The Westray Story concerns an event that, in all good common sense, ought not to have occurred. It did occur - and that is our unfortunate legacy (Richard, 1997: ix).

In this chapter, the Westray Mine disaster is examined with specific reference to the history of the mining industry in Pictou County, geological issues, the opening of the Westray Mine, legislative issues, events that led to the explosion, the public Inquiry, the criminal trial and academic studies into the Westray Mine disaster.

HISTORY OF MINING IN PICTOU COUNTY

Some historians argue that early settlers in Pictou County knew about the coal and the methane gas in the area. They argue that the name Pictou originated from the Native Micmac name “Pictook” - “Pict” in the Micmac language refers to a gas explosion - and that the Native people were referring to methane explosions from the coal when they selected the name for the area (Richard, 1997). As Justice Richard (1997) illustrates, coal mining in the Pictou County area has historical, economic and social aspects.

Countless men lost their lives mining for coal in Pictou County (Glasbeek and Tucker, 1999; Jobb, 1994; Whiteway, 1999). From 1809, when commercial mining in Pictou County began to 1866, no records of deaths or injuries were kept. Subsequent records indicate that 576 men died in Pictou County mines from 1866 to the early 1970s (Jobb, 1994; Ryan, 1992). Between the years 1800 and 1826 small coal mines operated in the area providing coal to the local people. Then in 1826, England’s General Mining Association (GMA) was given access to all the minerals in Nova Scotia. In 1858, the GMA monopoly ended and new companies began mining in the province. The GMA sold its mine in Pictou County to the Halifax Company which consolidated with two other companies under the name the Acadia Coal Company. The Acadia Coal Company operated in Pictou County from 1867 until 1914. Other underground mines also operated in the Pictou County area throughout this time period but, from 1984, when the Drummond mine closed due to fire, there were no underground mines in operation until Westray opened in 1991 (Jobb, 1994; Richard, 1997; Ryan, 1992).

GEOLOGY AND THE WESTRAY MINE

In coal mining, geology is the primary factor in determining the type of mine and the method of mining that will be used. The Westray Mine is an underground mine and in Canada, underground mines produce only five percent of the total amount of coal produced in the country. The remaining ninety-five percent of coal is mined in open pit and strip mines which extract coal from the surface (The Coal Association of Canada, 1998). Underground coal mines can use one of the following two methods: the room and pillar method or the longwall method. Due to the geological condition of the Foord seam where the Westray Mine is located, the only method that can be used to extract coal is the more expensive room and pillar method (Whiteway, 1999; Glasbeek and Tucker, 1999). In the room and pillar method, “the coal is mined by advancing in parallel rooms connected by cross drives, leaving supporting coal as rectangular supporting pillars. The coal in the pillars may be subsequently extracted, usually allowing the roof to cave following the mining”(Richard, 1997: 16).

THE OPENING OF THE WESTRAY MINE

The following section outlines the events that occurred before the opening of the mine including the role of politics. In the 1980s various corporations were interested in the opening of a mine in Pictou County and several studies were completed. In 1987, a Toronto-based mining business, Curragh Resources Incorporated, owned by Clifford Frame, purchased the Westray project from the Suncor corporation for \$7.5 million (Richard, 1997; Richards, 1999). According to documents examined by Justice Richard

(1997), one of the key politicians who was in support of the Westray Mine project was Donald Cameron, the provincial minister of Industry, Trade and Technology and a Pictou County MLA for the Conservative government of Nova Scotia led by Premier John Buchanan. Later, in 1991, Cameron replaced Buchanan as the conservative premier of the province (Jobb, 1994). Another supporter of the mine was Elmer MacKay, who was a member of Parliament for Nova Scotia as well as a federal cabinet minister at the time of the debates surrounding the opening of the Westray Mine. MacKay was a political affiliate of Cameron as well as a supporter of Brian Mulroney. MacKay gave up his seat in the Pictou County area for Mulroney, who later became Prime Minister of Canada (Jobb, 1994). A memorandum addressed to Curragh officials by an unknown author indicates that Curragh was attempting to use politicians to help Curragh in the bidding process with Suncor (Richard, 1997). The following is an excerpt taken from this memorandum, as quoted in Richard (1997), which illustrates the political involvement in the opening of the mine:

Bob Coates [minister of the federal Department of Regional Industrial Expansion] called John Buchanan [Premier of Nova Scotia]. He had talked to Thompson, the chairman of Suncor but didn't get much response - the bidding process has started and it is hard to change.

Buchanan was to call me for another chat but has not done so. Bob says he is very busy but I suspect he doesn't quite know how to handle Suncor (Richard, 1997:31).

Co-operation between corporations and the government is common in Pictou County.

For instance, Michelin Tire, one of the primary employers in the area, was able to re-draft the labour laws so that the workers were not permitted to form a union. This shows the

power of corporations in this area and the influence they have over government officials and the legal system (Glasbeek and Tucker, 1992, 1999; Tucker, 1995).

In 1990, the Curragh Resources corporation was given a fifteen year contract by the federal government, in which they were guaranteed an \$85 million bank loan, \$21.75 million as a contribution against interest and an additional \$8.75 million to reduce interest payments (Jobb, 1999; Richard, 1997; Whiteway, 1999). The provincial government of Nova Scotia, in turn, provided Curragh with “an attractive provincial financial assistance package on the strength of the political support it had rallied for the project: a \$12 million loan, an \$8 million interim loan, and a take-or-pay agreement, which guaranteed a sale for Westray coal” (Richard, 1997: 44). It is interesting that Cameron, as the provincial minister of industry, trade and technology, had already made the “take or pay” commitment on behalf of the provincial government to Curragh in 1988 without cabinet approval (Richard, 1997).

Around the same time as the negotiations concerning the Westray Mine were occurring, the Nova Scotia Power Corporation, which is owned by the Nova Scotia government, began constructing a new power plant which was designed to be fuelled by coal. The Nova Scotia Power Corporation (NSPC) was to pay Westray \$60 per tonne of coal and an additional \$14 per tonne of premium grade coal. If Westray were to meet its target, the Corporation’s annual revenue would be \$50 million. Purchasing coal from Westray was a direct benefit for the Nova Scotia Power Corporation since burning the low-sulphur coal from Westray would cut 17,000 tonnes of emissions which meant they would not need to build a special plant to deal with the emissions. Such a plant would

have cost \$200-million to build and \$16-million per year to operate. Other important elements in the debate over the Westray Mine were that in Pictou County during the 1980s the unemployment rate rose from 9.2% to 17.6%, the population declined and the average income was only 94% of the average income of individuals living in Nova Scotia (Jobb, 1994; McCormick, 1999; Ryan, 1992; Tucker, 1995). In the following quotation, Jobb (1994) contends that a number of individuals wanted Westray to open:

Cameron and MacKay may have been the most vocal proponents of the mine, but they were not alone. Municipal politicians, business leaders, the local papers, people longing for stable jobs - they all jumped on the bandwagon (Jobb, 1994:12).

LEGISLATIVE ISSUES

Legislation governing coal mines in the United States is more comprehensive and contains more severe punishments for mine violations than the legislation in Canada (Whiteway, 1999). In Canada, provincial governments are responsible for underground coal mines which are located in the following three provinces: Nova Scotia, Alberta and British Columbia. The only exception is that all coal mines in Cape Breton, Nova Scotia are governed by federal legislation. Since all of the underground coal mines in Nova Scotia were located in Cape Breton, the opening of the Westray Mine meant that new provincial inspectors had to begin the enforcement of the legislation (Glasbeek and Tucker, 1999; Whiteway, 1999). In addition to the problems related to the enforcement of the provincial legislation, Whiteway (1999) contends that the legislation itself fails to adequately regulate coal dust and methane levels which are specific to coal mines. Methane and coal dust are two components of underground coal mining which can be

very dangerous. Since methane is a flammable gas, adequate ventilation is necessary to dilute high levels of the gas and technological devices are needed to test methane levels. Coal dust is a combustible substance that needs to be dealt with through proper ventilation and diluted with stone dust in underground coal mines (Whiteway, 1999).

EVENTS LEADING TO THE DISASTER

The events that occurred in the mine leading up to the disaster are important to examine. In an article written by Glasbeek and Tucker (1992, 1999) and in Richard (1997), a time line is set out in which important dates are identified. On December 12, 1990, the Department of Labour discovered that Westray was blasting underground without qualified workers present. The department opted not to lay charges against the company for violating the law. In April 1991 the Westray Mine began producing coal and on May 23, 1991, twenty-four metres of roof fell in at the mine. There were no injuries reported after this incident, and no orders or charges were made by the Department of Labour in its aftermath (Glasbeek and Tucker, 1992; Hynes and Prasad, 1999; 1999; Richard, 1997; Ryan, 1992). On June 24, 1991 there was an order given to Westray by the Department of Labour forbidding the company to continue to have electrical arcing in the mine. No charges were laid by the Department of Labour even though this is an extremely dangerous procedure when high levels of methane gas are present in the mine (Glasbeek and Tucker, 1992, 1999). Then, on August 13, 1991, there was another major roof collapse (Richard, 1997).

On November 4, 1991, officials ordered Westray to generate written rules that

would ensure that miners would not work at places in the mine that lacked roof support. The company was also ordered at this time to record all of the rock falls in the past as well as ones that might happen in the future. On March 28, 1992 there was another rock fall in which officials discovered that the air contained 4 percent methane. The *Coal Mines Regulation Act* states that, if methane levels reach two and a half percent, work is to be stopped and miners are to exit the mine since 5 percent methane will explode upon ignition. Although Westray had violated this law, provincial officials did not stop production nor did they launch any legal action against the corporation, leaving the initiative to the corporation (Glasbeek and Tucker, 1992, 1999; Richard, 1997).

In September 1991, the month of the official opening of the mine, provincial officials were satisfied that Westray would implement a coal dusting plan by the end of that month. Yet the mine did not implement an adequate plan and on April 29, 1992 orders were given to the company by provincial officials that instructed the company to use nine times more limestone dust to reduce the risk of an explosion from the coal dust. When the explosion occurred on May 9, 1992, no one had checked to see if these orders were followed. The May explosion at the Westray Mine led to the death of the twenty-six miners who were trapped inside the mine (Glasbeek and Tucker, 1992, 1999; McCormick, 1999; Richard, 1997).

On January 5 and January 6, 1992 the first union vote was held in which Westray employees voted against unionization. Justice Richard (1997: 183) writes that according to testimony heard at the Inquiry, there were two factors that led to this outcome, “intimidation by management and the inability to gain the support of surface workers”.

Then, approximately two months before the explosion, the United Steelworkers of America began their union drive. On May 29, 1992, after the explosion had occurred, the second union vote was held and 82.5% of the surviving Westray employees voted in support of joining the United Steelworkers of America (Comish, 1993; Richard, 1997; United Steelworkers of America, 2000b).

In his book, *The Westray Tragedy: A Miner's Story* (1993), Shaun Comish, a former miner at Westray wrote about many unsafe practices. For example, the tractors that were used in the mine were modified farm tractors; they had electric starters and open exhausts that made them illegal for work underground. According to the Department of Labour, no fines or orders were ever given with respect to this machinery. Comish writes about flatbed trucks with ordinary lights that were changed to the proper ones only when they caused a fire. Many instances like these were not reported which is illegal in itself. Comish and other authors describe high levels of methane, improper arches, little rock dusting, no records of incidents, poorly maintained equipment, little training, lack of underground toilet facilities and supervisors verbally abusing the workers (Comish, 1993; Comish, 1999; McCormick, 1999; Robb, 1992). Glasbeek and Tucker (1999) write about Westray's reward system for productivity including a bonus system and unlimited overtime opportunities for its employees.

In the chapter "The Road to Recovery is Long" in *The Westray Chronicles*, Shaun Comish and his wife Shirley Comish (1999) provide an interesting perspective on the Westray Mine disaster and the public Inquiry. They write about their personal experiences and thoughts about how the disaster has affected their lives. The chapter also

discusses Shaun Comish's experience with testifying at the Inquiry. These personal experiences are then matched to the corresponding excerpts of testimony he gave to the Inquiry. The next section of this chapter outlines key events pertaining to the Inquiry.

THE PUBLIC INQUIRY

A public inquiry into the Westray Mine disaster was called on May 15, 1992 by then premier Donald Cameron who appointed Mr. Justice Richard as commissioner through an Order in Council from the province of Nova Scotia. The power of the commissioner for the Westray Mine Public Inquiry stem from the *Public Inquiries Act* and the *Coal Mines Regulation Act* (Jobb, 1999; McCormick, 1999; Richard, 1997). The Inquiry was an estimated two year project that was to commence in October 1992. In September 1992, a constitutional challenge and a *Charter* challenge were submitted by Curragh Incorporated, former Westray Mine managers, and several Westray supervisory staff members. The constitutional challenge stated that the terms of reference for the Inquiry went beyond its proper jurisdiction since public inquiries could not examine issues pertaining to criminal responsibility. In the case of the *Charter* challenge, its authors claimed that the publicity of the Inquiry would prejudice their rights to a fair trial, that their right to remain silent would be infringed upon if they were subpoenaed to give testimony at the Inquiry and that evidence collected by the Inquiry could be used against them in a criminal trial. The Inquiry was halted by the Nova Scotia Supreme court until this issue could be resolved. In November 1992, the Nova Scotia Supreme Court ruled that the terms of reference were out of the Inquiry's jurisdiction. Subsequently, in

January 1993, the Nova Scotia Court of Appeal overturned the previous ruling, but ordered that the Inquiry not proceed with any hearings until all trials were completed to avoid any possible conflicts with the criminal trial. In June 1993, the commissioner and the United Steel Workers of America appealed to the Supreme Court of Canada to allow the Inquiry to proceed. The Supreme Court of Canada ruling in May 1995, stated that the Inquiry could proceed, but testimonies could not commence until the criminal proceedings were completed (Jobb, 1999; McCormick, 1999). The Inquiry hearings commenced in the fall of 1995, after the criminal proceedings had been stayed. Justice Richard (1997) submitted the Westray Mine Public Inquiry report in November 1997 (Hynes and Prasad, 1999; Jobb, 1999; Richard, 1997).

THE CRIMINAL INVESTIGATION AND TRIAL

The RCMP began their criminal investigation on May 21, 1992 after allegations of documents being shredded at Westray. In the Fall of 1992, fifty-two charges were laid against former management under provincial legislation, but these charges were dropped in the Spring of 1993 when the RCMP reported that they would be filing criminal charges. In order for the criminal proceedings to commence the provincial charges had to be dropped due to the double jeopardy principle which states that an individual cannot be tried more than once for the same offence. Once withdrawn, these fifty-two provincial charges could not be reinstated.

In April 1993, Curragh Resources Incorporated and two former Westray Mine managers, Gerald Phillips and Roger Parry, were charged by the RCMP with

manslaughter and criminal negligence. In July 1993 the criminal charges were deemed vaguely worded and “fundamentally deficient” and were quashed in the Provincial Court (Hynes and Prasad, 1999; Jobb, 1999; McCormick, 1999). Within three days the RCMP laid the following new detailed charges: “The manslaughter count alleged that Curragh, Phillips, and Parry caused the deaths by failing to keep coal dust in check. The second charge alleged that all three had been criminally negligent in more than a dozen aspects of the mine’s operation” (Jobb, 1999: 176). The trial commenced February 1995 and ended in June 1995 when “allegations of non-disclosure on the part of the prosecution” caused the judge to stay the proceedings (McCormick, 1999: 33). Then, in December 1995, a new criminal trial was granted due to the judge’s bias against the Crown. The criminal case was stayed again in 1998 due to the prosecution’s lack of evidence. Then in 1999, the Justice Minister of Nova Scotia “announced that no further legal action would be taken” (McCormick, 1999: 34).

The Public Prosecution Service and Special Prosecutions Unit produced a report dated March 24, 1998. The report listed the following arguments against prosecution: (1) if the criminal charges in the Westray case were to continue the cost of adjudication would amount to approximately \$10 million; (2) there was no consensus on the probability of a conviction; (3) even if there were a conviction the sanction would probably be a community sentence and (4) the Crown’s case would be open to criticism from the public. The conclusion of the report was that it would not be in the public’s interest to continue with the case. In October 1998, a subsequent independent review of the prosecution’s decision to stay the Westray case was conducted by Justice Kaufman

and released in April 2000. The report concluded that the Crown's decision to stay the criminal proceeding was "not unreasonable" (*Globe and Mail*, April, 27, 2000; Jobb, 1999; Maich, 2000; McCormick, 1999; *Pictou Advocate*, May, 2000).

STUDIES ON THE WESTRAY MINE

There have been several studies on the Westray Mine disaster, most of which have become chapters in *The Westray Chronicles: A Case Study in Corporate Crime* (1999) which was edited by Christopher McCormick. Several studies on the Westray Mine disaster can be categorized as either media/journalism studies or legal analyses. Other studies have focussed on risk analysis, industrial crisis literature and giving a voice to the family members of the deceased Westray miners. The published studies on the Westray Mine disaster will be examined in this section.

Authors focusing on the mass media have attempted to show how the Westray Mine explosion was ideologically constructed in the media. John McMullan and Sherman Hinze (1999) selected the *Chronicle Herald* and the *Mail Star* for analysis since these are the two main newspapers in Nova Scotia. The time period 1992-1995 was selected for analysis. During this time frame, 1763 articles were written on Westray Mine. Since this number was too large for analysis, they selected various periods of time, and a sample of 183 articles was obtained from the selected time frames. Throughout the article they argue that the material they examined "reveals a composite ideology with definite, quite predictable formulations: a discourse of disaster, a typification of 'techno-tragedy', an imagery of individualization, a disavowal of social organizational causality,

and a denial of the event as crime news” (McMullan and Hinze, 1999: 211). They essentially refute the idea that the media presented factual and unbiased information in their reports. McMullan and Hinze (1999) conclude by stating that the articles they examined presented the same ideological point of view held by the corporate elites and that the articles failed to critically examine the corporate misconduct that occurred at Westray. McCormick (1995) writes about the extent to which “pack journalism”, where journalists report similar stories in the same way, occurred in the reporting of the Westray Mine disaster. He writes that initial articles written on the disaster contained a textual construction of the event which appealed to the readers’ emotions instead of focusing on the politics and economics which created the situation (McCormick, 1999; McCormick, 1995). In illustrating how the media could have alternatively focused their articles on other aspects of the disaster such as safety issues, McCormick (1999) refers to miners’ testimonies from the Inquiry.

I completed a qualitative media analysis on the Westray Mine disaster as an honours thesis in sociology in my fourth year at the undergraduate level (1998). In the study, the two main newspapers for the province of Nova Scotia, the *Chronicle-Herald* and the *Mail-Star*, were selected. The period from May 1992, the month in which the explosion occurred, until December 1992 was selected as the time frame studied since most of the newspaper articles on the Westray Mine were written during this period. The twenty-three editorials that were written in the selected newspapers during the indicated period were selected for analysis. The editorials were analysed through a political economy framework using various techniques of content and discourse analyses. The

results of the analysis indicated that certain concepts emerged and changed over time. For example, the reporting of the Westray Mine explosion as a natural disaster and expressing support for both the government and the corporation were concepts that appeared in the editorials immediately following the explosion. In later editorials, the tone changed somewhat and criticisms of both the government and the corporation began to emerge. The themes that were present in the editorials throughout the period included blaming the miners, discussion of the inquiries and the investigations, the effects on the community and the families of the deceased Westray miners, effects on the draegermen, and commentary on “expert” opinions. I argued that the use of emotions in the texts served to distract the reader from the facts such as how an explosion could occur and who was responsible. I also showed that omissions in text were important in that specific views were suppressed in the reproduction and preservation of power relations within society. More specifically, the views of the miners were not presented in the editorials, while in the first group of editorials, which were published within the first week of the explosion, the theme of blaming the miners was quite pronounced (Rae, 1998).

Trudie Richards (1994) provides an alternative interpretation of the reporting of the media in her Master’s thesis in journalism which has been published in the *Canadian Journal of Communications* (1996) and as a chapter in *The Westray Chronicles: A Case Study in Corporate Crime* (1999). Her study is based on a general review of media reports and interviews with journalists and people from the Pictou County area. She argues that insufficient information was provided to the media by the corporation during the Westray Mine disaster and the corporation failed to have a crisis plan. According to

her, the journalists reporting on the disaster lacked the knowledge to provide clear and accurate information to the public. Richards (1994, 1996, 1999) contends, however, that although corporations may fail to have a crisis plan journalists should be well informed about industries in their areas so that they are prepared to report accurately on incidents that may happen. She points to the fact that safety complaints had been made by Westray miners and that Bernie Boudreau, a Cape Breton MLA, had publicly criticized the Westray Mine on political and safety grounds before the explosion occurred, but journalists failed to report these public criticisms.

A legal analysis of the Westray Mine disaster is employed by Eric Tucker (1995) who writes about Westray from a juridical point of view. He contends that the laws pertaining to the health and safety regulations need to be improved. Tucker (1995) argues that the political economy played a large role in fostering the unsafe work conditions at Westray that eventually led to the death of twenty-six miners. He points out that the health and safety of the miners were not the primary concern to the corporation when deciding to mine (Tucker, 1995). In his article, Tucker (1995) discusses how the tort system can, in theory, be used to label the person at fault and hold them financially accountable. Yet, the tort system is usually unsuccessful for the worker trying to put blame on the employer for wrong doings. Employers in these types of situations tend to blame the incident on nature or on employees to shift the blame away from the corporation. He then argues that the purpose of inquiries is to make suggestions for change but, there are no rules that state that the government has to implement the recommended changes (Tucker, 1995).

In their articles, Glasbeek and Tucker (1992, 1999) examine, through the example of the Westray Mine, how government officials and private corporate officials who function within the current political economy do not consider worker safety a primary issue. In reviewing a feasibility study conducted in 1987 by Placer Development Limited on the Westray Mine site, the authors argue that the study failed to adequately consider safety of the workers. Technology and the economic prospects of the mine were the company's primary concern. After a corporate merger with two mining corporations, Placer Development decided not to continue with the project. Then, Curragh Inc., who eventually became the operators at Westray, took over the project from Placer Development and hired Kilborn Limited to conduct another feasibility study. Glasbeek and Tucker (1999) concluded that, like the Placer evaluation, the new study also failed to adequately examine worker health and safety issues. The authors' review of available federal and provincial government documents also indicated that although worker safety issues were mentioned by other parties, they were not given priority. Safety concerns raised by the Development Corporation of Cape Breton, the United Steel Workers of America and Derek Rance, a private mine consultant, were not given adequate consideration. Glasbeek and Tucker (1999) argue that in deciding to open the mine a cost-benefit rationality was implemented which focused mainly on estimated profits not health and safety.

Glasbeek and Tucker (1999) disagree with an interpretation that both employers and employees have basically the same goals and both take risks. They contend that although miners acknowledge some of the risks involved in mining, there are various

factors which influence their risk taking activities and over which they have no influence. For example, the production bonus system encouraged workers to put productivity before safety in order to receive the financial rewards. Moreover, management plays a key role in the development of acceptable standards of risk through their response to safety complaints. At Westray, safety complaints were discouraged and when they surfaced they were usually ignored. Workers also tried to minimize their perception of risk because they needed the job in order to support their families. Glasbeek and Tucker (1999) argue that with regards to safety, employees and employers do not take equal risks in that it is the employee who can become injured or even killed due to unsafe working conditions.

The concept of risk as applied to the Westray Mine disaster is further explored by Wilde (1999). In his qualitative study, the author examined four exhibits and 190 pages of miners' testimonies from the Westray Mine Inquiry that were given to him by the commissioner, Justice K. Peter Richard and the chief administrator of the inquiry. The commissioner wanted Wilde to examine the miner's perceived risk of danger and why it was accepted or rejected. He argues that individuals deal with stressful situations in two ways, the first is to try to change the situation and the second is to handle their feelings about the situation. Since the first method would be difficult for the miners for a number of reasons such as financial pressures and the lack of support from management, the miners used the second method. Wilde (1999) states that according to his analysis, the miners dealt with their feelings about the situation through humor, displaced anger and optimistic thoughts.

Among the reasons why the miners accepted the risks, Wilde included the effects of production bonuses, economic pressures on the miners, ineligibility for unemployment insurance and the workers' sense of loyalty to the other miners. The author's basic theory is that the level of risk accepted by the miners is dependent upon the calculations of the perceived advantages and disadvantages. He argues that:

. . . the amount of risk to health and safety that individuals are willing to accept is determined by four subjective utility categories of motivating factors:

- a. the expected benefits of comparatively risky behaviour alternatives;
- b. the expected costs of comparatively risky behaviour alternatives;
- c. the expected benefits of comparatively safe behaviour alternatives; and
- d. the expected costs of comparatively safe behaviour alternatives (Wilde, 1999: 103).

Advantages perceived by Westray miners engaging in risky behaviour were that they were employed in an area where there was a high unemployment rate and that the production bonus system increased their wages. According to Wilde (1999), studies in the United States indicate that safety bonuses substantially decrease accidents as opposed to the production bonus system which encourages workers to take risky behaviours. Most of the miners at Westray knew the costs of their risky behaviours which included dangers in the mine such as high methane levels and the presence of coal dust. There were low benefits attached to safe behaviours, in fact, miners were afraid to engage in safe practices since they thought that they would be fired. Other costs of safe behaviour were that if the miners quit or were fired they would not receive unemployment insurance and that they would be breaking the solidarity that existed among their fellow miners.

According to Wilde (1999), miners took these risks due to the following three factors: “the behaviour of management, the general economic conditions, and the motivations of the miners themselves” (Wilde, 1999: 113).

The Westray Mine disaster is examined in an interesting way by Hynes and Prasad (1997; 1999). In their study, they draw from literature on industrial crises and argue that mining crises require a different type of theory than the theories that have been used to explain more complex industrial disasters such as those involving nuclear power. They use the term “mock bureaucracy” to refer to a situation where employees do not comply with the rules governing the corporation since the rules are not enforced by management or other employees. By contrast, a “representative bureaucracy” refers to a situation where managers and workers enforce and adhere to the rules. In their research, the authors illustrate the existence and development of a mock bureaucracy at the Westray Mine. The materials utilized in their study included the Inquiry transcripts, newspaper articles, government documents and other published documents (Hynes and Prasad, 1999).

Based on their research, Hynes and Prasad (1999) argue that evidence of a mock bureaucracy can be seen in the violations of the *Coal Mines Regulation Act* recorded by the inspectors and reported by miners. At Westray, both the managers and the miners acted within a specific economic and cultural situation to create a mock bureaucracy. The goal of the managers was to address the financial pressures on the company through the increased production. According to Hynes and Prasad (1999), managerial ideologies and cultural rationalities are important to examine when attempting to understand goals of

managers. They argue that a “bureaucratic consciousness” exists where managers act in accordance with this consciousness and not on their own. They state that in contemporary capitalist society, managers act as agents of capital who would logically interpret production as a primary goal. The authors also argue that generally companies do not calculate physical risks and therefore managers would not have access to these types of calculations (Hynes and Prasad, 1999).

The authors state that the Westray miners contributed to that mock bureaucracy and violated safety rules for four distinct reasons. The first reason is that the miners received signals to disregard safety rules from their managers. The second is that miners did not have a union or a place where they could express their concerns about safety. The third reason is that many miners were inexperienced, lacked adequate training, and accepted unsafe conditions. Other miners, who were experienced, recognized unsafe practices but, became part of the culture and engaged in them despite their knowledge that it was risky to do so. The fourth reason is that the Unemployment Insurance Commission did not accept unsafe working conditions at the Westray Mine as valid reason to leave their jobs. Hynes and Prasad (1999) do not believe that in order to make advances in mine safety, more rules and regulations are needed. Instead, the authors advocate changing the norms in a way that promotes compliance to existing safety rules and regulations. Although this would be a difficult task, they recommend linking production and safety goals as well as allowing the public to examine corporate safety practices.

In a study focusing on the families of the deceased miners, Dodd (1999)

conducted eleven unstructured interviews with twenty-six people from eight of the families of the deceased miners at Westray. These interviews were conducted in February 1997. According to Dodd (1999), the Westray family members want society to understand that the men who died in the Westray explosion were murdered because of corporate greed and the neglect by the government. In opposition to the views expressed by the families is “a line of thinking that sees human beings as free from dependence on the wills of others except in those relations entered voluntarily (i.e., contracts) and as ‘proprietors of [their] own persons and capacities, for which [they] owe nothing to society’” (Dodd, 1999: 219). Dodd argues that this “possessive individualist” perspective is visible in comments which state that the miners are responsible for their deaths since they knew and accepted the risks. Based on the interviews, Dodd contends that the following four main claims are made by the family members of the deceased miners: (1) they want the eleven bodies that remain in the mine to be retrieved so that they can bury them; (2) they want an explanation for the explosion; (3) they demand individuals responsible to be identified and dealt with by the legal system; and (4) they insist that the social system which allowed such a tragedy to occur must be examined and changes must be made to ensure that it does not happen again. The families of the miners also discuss the resistance they have encountered since the explosion from the legal and political systems and other agencies. Dodd argues that it is important to examine the claims made by the families so that their voices can be heard and their concerns not be reduced to monetary compensation discussions that have emerged in the past (Dodd, 1999).

CONCLUSION

The Westray Mine disaster is an important example of alleged corporate wrongdoing which was never successfully prosecuted. The disaster left twenty-six people dead, while the public financial costs totaled \$105 million (Richard,1997). This figure includes the cost of the provincial government loans made to Curragh Resources Incorporated, the federal government loan guarantee, worker's compensation benefits, Canada pension benefits, unemployment insurance benefits and the cost of the Inquiry. While there exist several studies on the disaster, there is a gap in the literature with respect to a systematic examination of the production of the Westray Mine Public Inquiry (Richard,1997). This thesis is an attempt to address this issue.

CHAPTER 6

THE FINDINGS

This chapter provides an analysis of the sample of Westray Mine public Inquiry transcripts and the recommendations from the Inquiry in order to establish how this Inquiry was produced. The first section describes the key players at the Inquiry including the examiners, witnesses and the Commissioner for the Inquiry. The following section outlines the primary focus of the Inquiry followed by an analysis of the problematizations which emerged in the discourse of the Inquiry hearings. The next section gives a description of the formal rules stated at the Inquiry hearings and examines how these formal rules along with informal rules were exercised at the Inquiry. An analysis of the relationships of truth and power including how the search for truth is conducted at the Inquiry is described in the next section. The following section provides a description of the hearings of various groups of witnesses, the role of the Commissioner in these hearings and the demeanor of the witnesses. Since inquiry hearings are guided by the type of questions asked, special attention is paid to the line of questioning by the examiners representing different interests. In the next section there is a discussion about the seventy-four recommendations that were made by the Westray Mine Inquiry. After

this descriptive presentation of the Inquiry hearings and recommendations, there is an analysis of several themes that emerged in the discussions of theory and methodology in Chapters 3 and 4. The main themes addressed are: the nature of the Inquiry discourse, the Inquiry's conceptualization of risk and its construction of the distinction between the private and public sectors. In the final section, concluding remarks on the analysis are provided.

DESCRIPTION OF THE FINDINGS

Key Players

Witnesses at the hearings testified in a specified order based on their role in relation to the Westray Mine. Experts were the first group of people who testified at the Inquiry, this group included experts who were retained by the Inquiry and by government departments. The second group to testify was former Westray employees which included sub-groups of employees such as miners, supervisors and engineering staff. The third group included a variety of government workers such as inspectors, geologists, managers and directors from the following government departments of Nova Scotia (hereafter NS): the Department of Industry, Trade and Technology; the Department of Labour; the Department of Mines and Energy and the Department of Natural Resources. The fourth group consisted of politicians, including the former Premier of NS, Deputy Ministers and Ministers. There were also five other witnesses with diverse involvement in the Westray Mine who testified at the Inquiry.

In the opening comments at the hearings, the Commissioner described his

attempts to have representatives from the Westray mine operators testify and when this seemed unlikely, to include other organizations involved in coal mining. When he approached the Coal Association of Canada and the Canadian Institute of Mining, both organizations declined to testify before the Inquiry. The Commissioner stated that since these organizations declined to testify, company records from Westray had to be used as an indication of the Westray management's position. This frustration in the refusal of higher level representatives to testify is expressed in the following statement by the Commissioner in response to media reports that Gerald Phillips, one of the mine managers, spoke to them, but not to the Inquiry:

. . . if he has anything to say to this Inquiry, let him come here and say it under oath and in public. He knows that his testimony at this Inquiry cannot jeopardize his criminal trial, so says the Supreme Court of Canada. He knows that he will be given the same consideration as any other witness, that is, if he is in financial distress, which seems to be the case, then this Inquiry will see that his attendance here does not place him in further financial distress or burden. He must know that the only testimony which will be considered as part of this Inquiry is that evidence adduced here under oath. He knows that many people have appeared here voluntarily to tell their story. Finally, I'm suspect of those persons who take pot shots at the Inquiry from afar and yet are not prepared to put their evidence on record here in this hearing room (10576).

The examiners at the hearings played an important role in the Inquiry. The Inquiry Commission counsel who played the most dominant role in the hearings consisted of two examiners, Merrick and Campbell. The other examiners who participated in the hearings were representatives of parties with status at the Inquiry and they had limited rights to examine witnesses. Appendix A contains a list of the parties with status at the Inquiry and the examiners who represented each group.

Inquiries and Problematization

In the wake of the Westray Mine disaster, various questions emerged including those pertaining to alleged unsafe practices in the mine, the political involvement in providing financial support to Westray and reports of high methane levels. Public inquiries including the Westray Mine Inquiry can be studied as a response to and a vehicle for a problematization. Through the questions which are asked by the examiners and the responses of the witnesses, various situations are called into question and their interpretations negotiated.

The focus of the Westray Mine Inquiry can be seen in the Commissioner's opening statements at the hearings when he describes the mandate of the Inquiry as "broad, encompassing all aspects of the development, financing, operation, regulation and supervision of the Westray mine" (*Westray Mine Inquiry Transcripts*, 5). Although the official mandate of the Inquiry is very broad, a more specific image of what is being problematized emerges through exchanges between examiners and witnesses. For example, when one of the experts, Mitchell (see Appendix B for the list of witnesses included in my sample), is questioned by the Commissioner, he is asked to estimate, based on his past experience in investigating mine disasters, what are the chances that the cause of the disaster cannot be determined with precision. Mitchell responds that "99.999 percent of the time" the cause of the incident cannot be determined with precision (2935). Therefore the function of the Inquiry cannot be to determine the precise cause of the explosion since the chances of determining it are slim. In his examination of Mitchell, one of the solicitors for the inquiry, Merrick (See Appendix C for a list of examiners),

expands on the witness's previous comments when he states that in inquiries such as the one on the Westray Mine, determining the exact cause of the explosion may never be possible but, "the most important thing to do is to identify the most probable method by which it occurred, what possibilities there were and then to examine why there were such possibilities" (2934). At this point, the Commissioner comments that he agrees with Merrick's statement adding that the Inquiry tries to determine why all the elements which in all probability caused the disaster were present. In another hearing with a politician, the Commissioner expands on this statement when he asserts that the cause of the disaster is not a simple matter and that to determine probable causes, the Inquiry will have to examine all available information.

Criticisms of inquiry recommendations in general can be seen in Mitchell's responses to Merrick's questions about his opinion of the existence of two separate government departments in the province of NS: the Department of Labour and the Department of Natural Resources. Mitchell recalls that based on an earlier inquiry a recommendation was made to establish the two Departments and even if the Westray Inquiry decides to merge them together, another inquiry may decide to split them again. He emphasizes that these ministries' status is not the problem and should not be the focus of the Inquiry; he believes that the problem is a lack of communication between the two Departments.

What is being problematized in the Inquiry can be seen in the dialogue between the examiners and the witnesses. For example, technical safety violations are seen as a problem. The testimony of the two experts in my sample, McPherson and Mitchell,

included discussions about the need for proper ventilation in mines. According to both expert witnesses, evidence indicates that the corporation was in violation of the *Coal Mines Regulation Act*, for example, they did not take the required barometric pressure and water gauge readings. As the experts contend, the corporation was committing an offense when it failed to properly seal areas of the mine that were no longer being mined. They both point to inadequate planning of the mine and McPherson specifically mentions the design of the ventilation system, failure to use computerized calculations, and insufficient ducts for ventilation. Although both experts discussed ventilation, only McPherson made the health and safety of the workers as it relates to mine ventilation a primary focus.

According to McPherson, the explosion at Westray was caused by ventilation problems which led to an accumulation of methane which then ignited creating an explosion. When Merrick questions McPherson on the Manager's Safe Working Procedures pertaining to ventilation at Westray, McPherson describes the ambiguities of some of the procedures and indicates instances where Westray management failed to follow the rules. He also states that for safety reasons there needs to be an increase in employee training in ventilation procedures including the monitoring of the computerized system.

Different problematizations emerge as Mitchell discusses the miners' role in unsafe practices. When a labour representative, Roberts, asks Mitchell about his earlier suggestion that the miners might have been engaging in unsafe practices which played a role in the explosion, Mitchell states that although there may be no evidence that the

miners were engaging in unsafe practices, he has “never known an incident or an explosion or ignition that we cannot trace to a person’s or a number of persons’ failure to do the work safely and properly” (3100). Although the examiner attempts to get the witness to admit there is no evidence of miners engaging in unsafe practices at the time of the explosion, Mitchell disregards these comments by discussing his past experience and making general comments. In his defense of the role of the government inspectors in the Westray Mine, Mitchell calls into question the role of the miners and others in the corporation in deceiving the inspectors. He also argues that inspectors need increased training, more independence from the government and more power.

Both experts are questioned on other unsafe practices in the mine such as the lack of stone dusting, inadequate training, long shifts, alleged tampering with safety devices, including the emergency stop button on the continuous miner machines being disconnected, and the lack of response of the government inspectors to safety violations. When McPherson is asked to make suggestions for change, he recommends amendments to the *Coal Mines Regulation Act* including a new section on the health of the workers and the prevention of diseases such as pneumoconiosis or “black lung disease” (1753).

Problematizations emerging at the hearing of the miners include discussions pertaining to the lack of training at Westray, illegal activities, lack of safety practices, and the inadequacy of both supervisors and managers at the mine. The miners were questioned about and asked to comment on the lack of bonds between the miners due to the frequent crew and shift changes. A broader issue of the lack of alternative employment opportunities and its role in the miners’ acceptance of unsafe work

conditions was also touched upon, but only marginally.

The role of the government inspector is problematized in the hearings of miners and the supervisors. The miners and the supervisors are repeatedly asked to describe their views about the role inspectors played at Westray, to recall incidents where they saw or interacted with the government mine inspectors and to give their general opinions of the inspectors. However, although the miners and supervisors describe at the Inquiry various problems with mine inspectors, they are **not asked** to give recommendations for change.

In the hearings of the supervisors, the examiners questioned them on their simultaneous roles as a supervisor and an in-house mine examiner. They were asked about how they were able to focus on both production and safety. The logic of having supervisors take on the role as an in-house mine inspector was problematized in the hearings. The hierarchical structure of the employees at Westray was another area of problematization that emerged in the Inquiry during the hearings of the supervisors. When questioned by Campbell on his decision making powers at the mine, one of the supervisors, Capstick stated that his power was limited by his superior. As a solution to this problem, Capstick argued that supervisors need more power to enforce safety practices.

The lack of training and experience of the employees was problematized at the hearings of the supervisors. Both of the supervisors expressed their concern that the Westray Mine lacked an adequate training program for the miners. They also stated that many employees at Westray, including themselves, lacked the qualifications and experience demanded by their jobs. According to Capstick, this affected both safety and

production at the mine. The issue of inadequate employee training and experience was problematized at the hearings of many witnesses essentially in two ways. One served to allocate blame for safety violations to incompetent employees, the other pointed to the lack of training and experience to provide justifications as to why employees engaged in safety violations.

In Merrick's examination of another supervisor, Dooley, the examiner attempted to problematize the political involvement of individuals at the Westray Mine and the role of the mining culture. Neither of these allegations was supported by the witness's testimony and the examiner changed his line of questioning.

At the hearing of the engineer in training, Eagles, unsafe work conditions were problematized once again. For example, he was asked about high methane levels, inadequate stoppings, lack of stone dusting and torches underground. Problematization of the hierarchical power structure at Westray is also evident in the engineer's hearing. Questioned by Merrick on the power that the Engineering Department had in making decisions and implementing changes at the mine, Eagles denies that he and his department had any decision making powers at the mine. He is then asked who had this power in the mine and Eagles explains that Roger Parry, the underground manager, had the authority to make decisions. He points that Parry often made decisions without consulting the engineers and ignored their suggestions that aimed at improving conditions in the mine. The decision making process and the structure of power is often called into question at the hearings.

More general issues of problematization emerged at the Inquiry hearings of the

politicians compared to the other witnesses. In particular, the politicians were asked questions about political interference in the mine. These questions included asking them about their involvement with the Westray Mine, their knowledge of the role key political figures played in the project and why specific individuals supported the proposal for a mine. These questions often referred to the negotiations surrounding the government funding of the mine. An example of how an examiner problematizes the issue of political interference is when Merrick asks former Nova Scotia Premier, Buchanan, to explain how governmental support of the mine was for “the public good, as opposed to being for political gain” (14918).

More specific issues were also problematized in the hearings of the politicians. In questioning the Deputy Ministers and Minister, the commission counsel problematized their lack of knowledge of the *Acts* governing their Departments including the responsibilities and powers that they had under the *Acts*. They were asked about the inaction in response to violations committed by Westray. The politicians’ role in ensuring health and safety at the mine was also problematized. For example, Rogers was asked about the role health and safety played when his Department approved the Westray Mine proposal.

Rules and Regulations in Practice

During the opening remarks at the hearings, Merrick, comments on the ordering of the witnesses testifying at the Inquiry. He states that the experts will testify first, in order to develop the background information to which the Inquiry can refer later. Following the experts are the testimonies of employees, such as the miners, who discuss

the daily operations of the mine. The next group of witnesses is expected to give information about the management, operation and regulation of the Westray Mine and include government employees and politicians.

The formal rules were stated during the opening comments at the hearings when the Order-in-Council, mandate and powers of the Inquiry were laid out. Commissioner K. Peter Richard comments that the rules for the proceedings, which were based on the Krever Inquiry, “seem to provide adequate protection to the individual without doing violence to the concept of an investigative, as opposed to an adversarial, proceeding” (13). Richard states several rules that must be followed during the hearings. They include the requirement for all parties to bring all of their information, including all documents, to the inquiry counsel before the hearings and that opening statements are limited to the presentation by the inquiry counsel. While only the inquiry counsel may examine the witnesses, all parties may make suggestions to the inquiry counsel during any breaks in the hearings. This procedure avoids interruptions in the dialogue at the hearings. If a particular party is not satisfied with the response of the inquiry counsel, they may speak about the matter directly to the Commissioner. In addition to thorough examination of witnesses by the inquiry counsel, limited cross examination by parties with status will be allowed depending on time constraints but re-cross examinations are not permitted. In practice, examiners representing parties with status had the option of examining each witness for a limited amount of time. The Commissioner describes the hearings as informal in that counsel may be seated during the examination of witnesses, more than one witness can be called at the same time and transcripts can be introduced instead of

having the witness testify. The Commissioner also states that he will not permit “needless repetition . . . and any undue interference or interruption” (23).

In the Inquiry there is evidence of a coalition forming which may be seen as a tactic of the parties to pool their resources and gain power by being unified. The NS Federation of Labour states during the opening of the Inquiry that, although they may not be present during the hearings, their interests will be voiced through the United Steelworkers. In a discussion pertaining to the ordering of parties during the cross examinations, Endres, a solicitor representing the Department of Justice for NS, argues that the Department should go last. He explains that Larkin, one of the solicitors for the United Steelworkers, wants to “accomplish” some things through the Inquiry and the Department should be permitted to cross examine last so that they can address issues which may be introduced by the Steelworkers (33). The Commissioner states that he will rule on this after the break and eventually rules in favour of the request. There are exceptions to this rule, however, which can be seen when the solicitors representing the NS Department of Justice cross examines provincial witnesses first.

The commission counsel have full control over examining witnesses, although they have to ask for the Commissioner’s permission whenever they want to change the established order. For example, Merrick asks the Commissioner to allow him to re-examine one of the experts after the cross examinations commenced, on the grounds of some new evidence he heard from a meeting with another witness. Although this is not part of the procedures outlined in the rules, the Commissioner allows the commission counsel to re-examine the witness.

Not only the commission counsel but also representatives of the parties with status are empowered to have control over the dialogue at the hearings. All examiners have the ability to control the topics through the questions they ask and the understanding that witnesses are not allowed to address other issues without permission. Examples of this can be seen when witnesses, such as McPherson, ask the examiner for permission to speak on specific subjects. Another example is when one of the miners examined, Savidge, asks Campbell for permission to allow him to give a more detailed answer to her question in the form of a story. Another example of the control the examiners have over the witnesses is during Campbell's examination of Savidge. In the dialogue, Savidge seeks Campbell's legal advice concerning taking action against the mine that terminated his employment shortly after the Inquiry staff contacted his workplace. Since this is not part of what Campbell wants or is expected to discuss, she ignores the question and changes the subject.

Although it is clear that the examiners are in control, they generally give the witnesses permission to continue with their responses and they do not typically interrupt witnesses when they are making a statement. There are, however, exceptions to this rule. For example, commission examiner Merrick interrupts a witness to ask additional questions about what the witness said, before letting him move onto a different topic. Merrick also interrupts another witness to change the topic by stating that he may ask questions later about what the witness is explaining and proceeds to ask questions about a different topic.

The differential status of the commission counsel and other examiners becomes

visible when the latter are brought to order for interrupting witnesses. In one case one of the NS government's representatives, Endres, continuously interrupts Estabrooks (miner) when he is trying to answer the questions. One of the solicitors for the Inquiry, Campbell, interrupts the proceedings to suggest that the witness should be allowed to finish his answers. Although the Commissioner does not intervene to make a ruling, Endres does allow the witness to make his statement. Another NS government's representative, Wilson, does not want to allow expert witness McPherson to explain his scientific evaluation of a report at Westray. The report contradicts what the examiner wants the witness to say, so the examiner attempts to ask another question. However, the Commissioner interrupts the dialogue to tell the examiner to allow the witness to make his statement (1830). During MacArthur's questioning of one of the Westray mine supervisors, Capstick, the Commissioner instructs the examiner to allow the witness to finish his statements when the examiner tries to stop Capstick from explaining his previous statements. Although MacArthur immediately allows Capstick to explain his statement, he interrupts the witness again shortly after the Commissioner made his first ruling. The Commissioner responds by saying "just stop the argument, please" (9450) and rules that if the examiner wants clarifications on the witness's previous statements he may ask questions, but the Commissioner will not tolerate an argument. The examiner conformed to the ruling for the rest of his time with the witness.

The Commissioner or the commission counsel intervene also on other occasions when they feel that an examiner's questions are inappropriate. For instance, the questioning of a witness by Traves is interrupted when Campbell states that the examiner

is taking a quote out of context. The Commissioner rules in favour of Campbell and the examiner stops this line of questioning. Another example is when the Commissioner interrupts the dialogue of Hebert's examination of Rogers to agree with the witness when he stated that he had already answered the examiner's question. The examiner immediately moved onto other questions after the ruling was made. During MacArthur's examination of Dooley and Well's examination of Buchanan, the Commissioner interrupts the dialogue to instruct the examiners not to give personal views and experiences when examining witnesses. The Commissioner states to MacArthur that these types of comments can be used in his summation after the hearings.

The Commissioner is forced to make rulings based on objections by the solicitors representing the NS Department of Justice during the hearings of two politicians. When the commission counsel examines Mullally, Traves interrupts three times to make objections to the questions or to help the witness with his answers. Each time the Commissioner ruled that the witness should answer the questions for himself and overrules Traves' interjections into the dialogue. At another point in the same hearing, Traves interrupted to object to the wording of the question by the commission counsel and the Commissioner agreed with the objection. The Commissioner also agreed with another representative of the NS Department of Justice when he objected to the commission counsel's wording of a question directed to Legere. In both cases the commission counsel reworded their questions.

The time restraints seem to be an area which some of the parties do not agree with. When asked about how much time he needed for the cross examination of a

witness, Endres expresses his concern about the time limitations and states that the cross examiners need to have enough time to ask questions. While the Commissioner often makes rulings on the time limits when examiners are questioning the witnesses, the examiners try sometimes to resist or manipulate these limits. For example, when Hebert and Wilson are cross-examining a witness, the Commissioner interrupts them to state that their time with the witness is finished. Nevertheless, Hebert and Wilson both continue to ask the witness additional questions. Similar examples are when the Commissioner suggests in several hearings that Hebert should finish soon his examination of witnesses, and the examiner continues to ask additional questions. In another case, when the Commissioner rules that Hebert has one question left when examining a witness, Hebert asks the witness a general question then breaks it down into more specific questions. When Hebert is examining another witness, the Commissioner interrupts twice to remind him of the time limitations. In some other cases the examiners immediately stop questioning the witnesses upon being informed that their time is finished. At the hearing of Buchanan, the Commissioner states that the Inquiry has been “requested to speak quickly” since the witness has to leave and he reminds the examiners of the time limitations. In a different situation, the Commissioner interrupts Wilson’s questioning of a witness to state that he is giving him extra time with the witness since the questioning is about a “sensitive issue”, referring to the witness retracting his previous statements and making new claims. Rulings on time limits do not apply to the Inquiry Commission Counsel.

Sometimes rules seem to be applied unevenly. When a Westray miner, Savidge,

examined by Roberts, attempts to tell the Inquiry about a conversation he had with the General Mine Manager, Gerald Phillips, the Commissioner interrupts to tell Savidge that he should not discuss conversations he had with others. Yet other witnesses are specifically asked about conversations they had with other people in the mine and there are no rulings made on those questions. For example, Campbell questions another miner, MacKay, on a conversation he had with Albert MacLean, a government mine inspector. She asks MacKay what they said to each other, if anyone else was present and where and when the conversation took place.

Overall, the organizing principles of the Inquiry seem to be related to the clear hierarchy of power, with the Commissioner at the top, followed by the commission counsel who are then followed by the examiners representing the selected parties with status. The witnesses' testimonies are strictly controlled by the line of questioning by the examiners. Different examiners may follow, however, different lines of questioning, based on the interests of the particular groups they represent.

Power and Truth

In the opening remarks, the Commissioner states that: "It was imperative for Inquiry counsel to have the assistance of competent mining engineers on an ongoing basis in order to gain an understanding of which material was or was not germane to the mandate of this Inquiry" (21-22). This statement shows the importance of engineers in determining the material that is applicable and relevant to the Inquiry. Although other knowledge sources, such as miners who worked at Westray, could have also been used in determining relevant material, judging by the Commissioner's statement this Inquiry

placed much higher value on the knowledge of engineers.

The testimonies of the two experts in my sample were based on scientific and technical information. In the hearings, McPherson, one of the experts, is often asked to give his opinion and to make recommendations based on his scientific background. When asked these questions, he typically answers them by using scientific studies and data to substantiate his answers. In his testimony, McPherson actually separates his expert technical knowledge from what he considers his non-technical or experience-based knowledge. This happens, for example, when he discusses the length of shifts in mines. When Mitchell, the other expert whose testimony I analyzed, is asked questions, he often follows his answer with a repetition of his credentials, such as being involved in the inquiries on more than 200 mine explosions.

On some occasions, while examining witnesses, the examiners or the Commissioner make references to statements made by expert witnesses who testified at the Inquiry. Referring back to an expert's testimony results in a reinforcement of the superiority of their scientific and technical knowledge.

The miners' testimonies are based primarily on their work experience as miners or working in mines. The exception is Savidge who bases some of his statements on his educational background in mining. Sometimes attempts are made to prevent the miners from sharing their knowledge of how things are done in the mine. For instance, Endres attempts to prohibit Estabrooks from explaining why he signed a document that states he received, read and understood a handbook on the health and safety regulations at Westray. Endres only wants the witness to acknowledge that he signed the document

while Estabrooks attempts to explain why he signed the document without knowing what it said. After one of the commission's examiners intervenes, Estabrooks is permitted to explain that when he commenced work at Westray he was required to sign a large number of documents without being given an opportunity to read them.

Similar to the miners, the testimony given by the supervisors was based on their work experience. The supervisors' testimonies focused primarily on specific incidents while they were employed at the Westray Mine. Since part of the hearings involved the supervisors' denials of allegations about their unsafe behaviour, contradictory evidence emerged. When Capstick continuously denied allegations made about him, Campbell stated that the Inquiry will either believe him or all of the miners and supervisors. This comment made by Campbell seems to indicate that she does not believe the witness since a number of other individuals testified about various unsafe practices Capstick engaged in.

The importance of engineers which was expressed in the Commissioner's statement at the opening of the hearings is also reflected in the types of questions asked to the engineer in training included in my sample. Although the questioning of Eagles was similar to the miners and the supervisors in that he was asked about specific incidents while he was employed at Westray, the major difference was that he was asked to give recommendations on the prevention of this type of disaster in the future. The fact that Eagles was asked these type of questions, while others were not, suggests that the Inquiry places a higher value on his recommendations and type of knowledge.

The testimonies of the politicians were based on their experiences as government

officials. More specifically, they were each asked to describe their roles and involvement in the Westray Mine. Most of the politicians were also asked about their knowledge of the roles that other politicians played in the Westray Mine. Similar to the experts and the engineer's hearings, the politicians were given an opportunity to express recommendations for changes, but the difference was in the wording of the question. With the politicians, the question seemed to suggest responsibility in that they were asked to express what they would do differently, what lessons they have taken from the Westray Mine and whether they accept any responsibility for the tragedy.

At the hearings, a lack of scientific data was used by some witnesses to justify their inability to answer a question and to justify their inactions. For instance, when Merrick asked Westray mine supervisor Dooley about the adequacy of stone dusting at the mine, the witness responded that he could not answer the question since he had not seen an analysis of dust samples at the mine. He also used the excuse pertaining to a lack of scientific data to justify why he did not take action in unsafe situations.

In determining what type of knowledge is mobilized and/or privileged at the Inquiry hearings, it is interesting to compare the number of individuals selected to give testimony in specific areas and the amount of time that each person is given. Although there were more miners than experts that testified at the Inquiry, the amount of time allotted to them both globally and individually, was only a fraction compared to the time afforded to the experts. The results of calculating the average length of the experts' and the miners' transcripts in my sample, according to the number of pages per person, I discovered that the experts' testimonies were on average, over 4.5 times longer than the

average length of the miner's transcripts in my sample.

The Examination of the Experts

In my sample, two out of the nine transcripts from experts who testified at the Inquiry were selected for analysis. The group of experts consisted of both consultants hired by the Inquiry and consultants not retained by the commission who had relevant testimony. The two expert testimonies selected for this thesis include McPherson who was hired by the Inquiry commission and Mitchell who was hired by the NS Department of Labour. The types of questions asked of experts by various examiners reveal the interests of the particular groups they represent. Merrick, a member of the counsel for the Inquiry commission, begins examining each of the experts by asking them to state their qualifications, education, training and experience. His other questions are of predominantly technical nature and include the witnesses' evaluation or interpretation of the Inquiry material, based on their scientific background. In the hearings Merrick tries to establish the differences in the expert opinions and why they differ. Throughout the hearings, Merrick asks the two experts to give their opinion on scientific reports from Westray and on rules and regulations in the mining system that governed practices at Westray and mines in general. For example, McPherson is asked to give his opinion on the Manager's Safe Practices Rules at Westray regarding stone dusting procedures and Mitchell is asked to give his views on merging two government departments which govern mining in NS. In Merrick's examination of McPherson, the witness is questioned on very specific aspects of mining, including methane gas and ventilation, and he provides definitions of various terms. He is then questioned on specific technologies and

methods that can be used in mines. Some questions that Merrick directs to Mitchell are less technical, for example when he asks about government inspectors being influenced by political pressures. Generally, however, Merrick's line of questioning focuses on technical clarifications and interpretations of the Inquiry's material.

The representative of the United Steelworkers of America, Roberts, commences his examination of the two experts by asking questions of a very different nature. Roberts makes distinct references to the NS Department of Labour, the Minister and the inspectors regarding what they should have known and the action they should have taken. In questioning Mitchell, Roberts states that there is no evidence of miners engaging in unsafe practices at the time of the explosion. While clearly attempting to defend the actions of the miners in his questioning of Mitchell, Roberts asks the witness about unsafe or illegal practices of the supervisors and the mine operators, including the General Mine Manager, Gerald Phillips.

The solicitor for the Westray Families' Group, Hebert, asks questions pertaining to the experts' technical scientific opinions about ventilation in the Westray Mine and about the role of the government mine inspectors. More specific questions are directed to Mitchell about his involvement in the post explosion investigation with the Department of Labour, including the decision that was made to flood the mine.

In his examination of the experts, Wilson, the solicitor representing the government of NS, tries to defend the laws governing mining and the actions of the inspectors. For example, when he questions Mitchell he asks him if inspectors could have detected ventilation problems to which the witness answers that they could not.

Simultaneously, he attempts to place responsibility for unsafe work conditions on the management at Westray, which can be seen when he quotes legislation about the responsibilities of mining corporations. In the intervention by the Inquiry commission counsel, Merrick refutes Wilson's suggestion that inspectors were not wrong in their actions or inactions. To make the point, he cross-examines the experts about specific situations where both the inspectors and mine operators are alleged to have failed to provide a safe work environment. When questioning Mitchell, Merrick asks about problems with the training of inspectors, the rescue operation and the RCMP investigation which followed the explosion.

Both of the experts were led through the hearings by the examiners' questions. The examiners had complete control over the dialogue which can be seen, for example, in the way they impose a change of the topic by asking questions about a different topic or when they interrupt explanations which they judge too detailed. They insist on straight answers. For instance, when examining Mitchell, Merrick frequently receives examples instead of direct answers from the witness. In such situations the examiner asks the question again or rephrases the question to make it more specific and direct. At one point in the questioning, Merrick states "Mr. Mitchell, my next question to you – I'm going to again ask for your candor because I think if we are to learn anything of value to this Province, we have to start to getting very candid with each other" (2975). This statement suggests that Merrick wants Mitchell to be straightforward and perhaps more open in his answers. When Roberts and Wilson examine Mitchell, they have the same problems as Merrick in trying to get the witness to be direct in his answers. Mitchell typically gives

long answers in which he avoids answering the question, making it necessary for the examiners to repeat questions. At one point, Wilson asks the same question about methane layering three times before he finally gets an answer that did not avoid the question.

The Role of the Commissioner in the Expert Witnesses' Testimonies

During the expert testimonies, the Commissioner interrupts frequently to determine page numbers, references to documents, to make clarifications or to ask questions. This suggests that he listens intently and attaches great importance to their statements. Sometimes the Commissioner will interject comments which are unrelated to the Inquiry perhaps to lighten the dense scientific material. For example, when the Commissioner receives an answer to his question from a witness he responds, "Thank you, I was confused on that, as with a lot of things" (1417). Yet the Commissioner may also become very blunt as, for example, when he says: "I don't buy that at all" (2898), in response to Mitchell's statement that he does not remember when questioned about the methane detectors on machines at Westray.

Demeanor of the Expert Witnesses

During Merrick's examination of McPherson, the witness is very confident in his responses and provides very specific answers to the questions posed by the examiner. At one point in the questioning McPherson interrupts Merrick to repeat his answer. When McPherson is asked to express his feelings about the gravity of specific situations, he gives a scientific answer. It is obvious that he prefers to answer questions based on scientific knowledge rather than on his own feelings about the topic. The witness also

tries to make his answers less complex by using examples. When McPherson is examined by Roberts, he constrains his answers to technical responses while refusing to make comments about enforcement of regulations. In the examination by Hebert, McPherson answers the questions but when he is pushed to address a nontechnical issue he refuses to directly answer the question. When McPherson is examined by Wilson, the witness answers the questions but occasionally states that he had already answered certain questions previously. It is clear, however, that Wilson, the Government of NS representative, has control over the witness, who asks permission whenever he wants to expand on his answers or finish his responses.

In Merrick's examination of Mitchell, the witness becomes very defensive when he is confronted with contradictory statements he made. Merrick attempts to calm the witness when he states "I'm not trying to pin you or cause you any difficulty, Mr. Mitchell. All I want to do is establish what you said then and what you are saying now" (2890). Mitchell, an expert hired by the Department of Labour frequently tries to avoid answering the questions asked by Merrick by telling stories or giving examples. The witness often uses common phrases and safe phrases when he is trying to avoid answering questions. When Roberts and Hebert question Mitchell, he also avoids answering some of their questions. Yet he does not attempt to be evasive when questioned by Wilson, a solicitor for the NS Department of Justice. When Merrick questions Mitchell for the second time, after the examination by the other parties, he asks Mitchell specifically about things he stated when being questioned by Wilson. The witness becomes very cautious in his responses to questions about his criticisms of the

mine rescue operation and the RCMP investigation. When questioned on these topics the witness expresses his concerns when he states “Boy, don’t get me in trouble on this one” (3254) and “I may get in trouble for this one” (3260) before he answers the question. It is worth noting that both expert witnesses became defensive, refusing to answer questions or avoiding questions, during the examinations by the labour representative and the solicitor for Westray Families.

The Examination of the Miners

My sample included six of the 23 miners who testified at the Westray Inquiry hearings. Throughout the examination of the miners, the examiners had full control over the dialogue at the hearings. The examiners asked the miners questions and the miners responded to the questions.

In the sample, only one of the solicitors for the Inquiry commission, Campbell, examined all of the miners. She led all of the miners through the testimonies by asking questions and if the witness needed to be prompted, she would provide them with further details such as names of people. Through the study of Campbell’s main line of questioning of the miners, patterns of questions emerged from the transcripts. In each of the six miners’ testimonies that I examined, Campbell commenced the dialogue by asking the same types of questions. These standard questions include identifying background information, previous work experience, any mining experience prior to working at Westray and any certificates that they may have. Miners were also asked about what their jobs were while they were employed at Westray.

Another type of questions Campbell posed to the miners concerned the training

they received at Westray. She also asked them to compare the training the company indicated that it had provided for each miner and what they had actually received. Since there were discrepancies, Campbell was attempting to determine the level of training the miners actually received. Although generally the miners were not asked about what they thought should be included in a training program, Campbell asked one of them, Estabrooks, if he felt that he needed additional training and what training he needed. When Estabrooks responded with a vague and general answer, questions requesting a more specific and detailed response were not asked.

In my sample, Campbell asked four out of the six miners about the skills tests they were given while they were employed at Westray. They were asked about details relating to the test including the structure, format, administration and questions that were on the test. Although some of the miners were asked if they thought that the test they were given was inappropriate they were not asked to elaborate or make recommendations for changes.

Campbell also asked most of the miners general questions about safety conditions at the Westray Mine, such as if they felt safe, if they contemplated quitting or if they refused work in certain situations. All of the miners were asked some specific question about safety at the mine such as problems with ventilation, incidents of high methane levels, rock falls and the need for more stone dusting. In her inquiries about the safety conditions at the mine, Campbell asked the miners to describe incidents when they experienced these types of problems. Typically, Campbell asked if they reported these incidents to anyone, if so who and whether they knew the response to their concerns.

The miners were also asked about the relationships between them and their supervisors and management. When questioning the miners on this topic, Campbell asked them about incidents when their superiors engaged in unsafe behavior or became verbally abusive. Campbell also questioned the miners about the government mine inspectors who examined the mine during their employment at Westray. All six miners in my sample were asked if they saw mine inspectors while working at Westray. If they had seen the inspectors in the mine they were asked when and where the inspectors were in the mine and who was with them.

Four out of the six miners were asked if they knew about the Occupational Health and Safety Committee, which was a committee that was set up by Westray according to the *Occupational Health and Safety Act*. The three miners who knew about the Committee were asked if they had any concerns about the mine and whether they expressed them to the Committee. Three of the six miners were asked about their perception of the pressure for production and about production bonus incentives. For example, MacKay was asked to describe the pressure he was subjected to by his superiors to complete work quickly. Another example is Deane who was asked to explain the production bonus system at Westray where financial incentives were given to teams of miners who completed work at a fast pace.

Campbell also asked specific questions that referred to each miner's individual experience. For example, Estabrooks was questioned about the injury he sustained while employed at Westray and the company's attempt to coerce him to return to work earlier than recommended by his doctor. Another example is Savidge who was questioned on

his work as a surveyor at the Westray Mine while he was employed with Suncor. A final example of questions specific to individual miners concerns Deane who was involved in the mine rescue at Westray and was asked to describe his role and experience.

In cross-examining the miners, the solicitor for the United Steel Workers of America and the NS Federation of Labour was Roberts. The primary focus of his questions was to establish the role of the supervisors and management in engaging in or condoning illegal and verbally abusive behavior and to preempt any possible attempts to attribute responsibility to miners. When Roberts asks about illegal or dangerous activities that the miners engaged in or witnessed, such as the use of chain saws or torches underground, he wants to know if supervisors or managers witnessed, instructed others or in any other way took part in these actions. Some of the miners are asked to describe arguments that they heard while at Westray in which mine managers Phillips and Parry are said to have been verbally abusive towards miners.

In examining the miners, Roberts uses various questions to detract from possible arguments that the miners contributed to the disaster. For example, he questions them about their lack of knowledge about mining and their lack of awareness of specific safety regulations such as restrictions on the use of machinery underground. One miner is asked about being trained at Westray by a fellow miner not a certified trainer, another is prompted to indicate to whom he reported a lack of stone dusting in the mine.

The solicitor for the Westray Families' Group was Hebert. Similar to Roberts, Hebert asked five out of the six miners about dangerous or illegal activities that they were ordered by their bosses to engage in and whether they had confidence in the management

at Westray. For example, Deane was questioned about being asked to lie to the insurance company about the damage of the machinery after the explosion and Sample was questioned about being told to block off the ventilation tubing to specific areas of the mine. The miner who was not asked these questions was MacKay. When Hebert examines MacKay, he takes the opportunity to question him about his brother who died in the mine explosion. Hebert asks him about his brother's work experience before Westray, his brother's position at Westray as well as how he and his family have been affected by the explosion. Hebert also asked some of the miners to recall arguments they witnessed where management became verbally abusive, to describe conditions in the mine during inspections and to relate incidents that happened in the mine and were specific to that particular miner.

Four of the six miners were examined by MacArthur, the representative from the United Mine Workers. Since MacArthur is a miner and not a solicitor, his way of questioning is different from other examiners. In questioning the miners, MacArthur often discusses his experience as a miner and explains things to the witnesses. Although MacArthur asks each miner different questions about a variety of specific conditions in the mine such as the availability of safety glasses, problems with roof support, the use of rusty bolts, methane levels and incidents of an underground fire, the common theme is safety. The majority of the questions directed to the miners are designed to determine safety practices that were adhered to and those that were ignored.

The representative for the Canadian Union of Public Employees, Robert Wells questioned all six of the miners that were included in my sample. Predominantly, he asks

questions to clarify the information obtained in earlier questioning of the miners. His line of questioning includes training practices at Westray and incidents of unsafe practices in the mine. He asked three witnesses to explain their knowledge of the *Occupational Health and Safety Act* and the Occupational Health and Safety Committee.

The team of solicitors representing the government of NS included Endres, Wilson and Traves. Each of these three solicitors examined two miners in my sample. The way the witnesses are examined by these solicitors is different from the other examiners in that they are very forceful in their questioning. For example, Endres asks Estabrooks the same question twice and upon receiving the same answer both times, he states "I suggest to you" (4941) and explains what he believes the answer should be. When witnesses do not give the answer the examiners expect, the solicitors confront the witness with comments they might have given in past interviews with the RCMP and the inquiry counsel. When Endres questions Conklin, the questions are very specific and at one point in the examination Endres asks Conklin a question and then adds: "Yes or no?" (6017). Endres does not want the witness to explain his answer about the amount or frequency he stone dusted, he wants a simple yes or no response to the question.

All three solicitors for the government of NS asked the same type of questions to the miners. Their main line of questioning included asking the miners about their knowledge of and participation in unsafe practices, but their approach was distinctly different from that of the previous examiners. Two of the miners were asked if they were provided with employee safety rules when they started to work at Westray and when they denied receiving this document, the solicitors showed them their signature on a document

stating that they had in fact received these rules. Another two of the miners were asked about their involvement in deceiving government inspectors by moving to the surface machinery that was illegally operated underground or by hiding fuel that was illegally stored underground prior to inspections. They were then asked why they continued with these practices if they knew it was dangerous and whether they reported their concerns to the Occupational Health and Safety Committee or to the inspectors. The miners were asked to justify their involvement in unsafe practices and to explain why they did not report their concerns through the proper channels. When Endres examines Estabrooks about his training, he tries to explain the discrepancies by suggesting to him that the Westray document listing the training of all the miners was merely a tentative schedule for training and not a record of completed training. Eventually, Estabrooks agrees with Endres' suggestion that it could be a list of proposed training.

The Role of the Commissioner in the Miners' Testimonies

In three of the six miners' testimonies that I analyzed, the Commissioner took the opportunity to briefly examine them. In examining the first witness, the Commissioner asked him about the information he gave during his testimony about planning errors made by Westray and whether they could be due to incompetence on the part of the corporation. The Commissioner questions the other two miners about the operation of specific pieces of machinery used in the mine including the boom truck and the stone duster. Before the Commissioner questions Sample, he makes the following comment "Just a couple of questions, Mr. Sample. I have to keep these people here until 4:30, otherwise I will get docked, you see" (6543). This comment indicates that the

Commissioner is asking questions to this miner in order to fill allotted time and does not attach great importance to the miner's answers.

Demeanor of the Miners

The miners appeared to be most comfortable answering the questions asked by Campbell, who is one of the solicitors for the Inquiry commission. Sometimes the witnesses needed to be prompted by Campbell and she would rephrase the question typically with more details such as names or locations in the mine. The witnesses generally do not seem unduly pressured when they answer the questions posed by the examiners representing the United Steel Workers of America, the NS Federation of Labour, Westray Families' Group, United Mine Workers, Canadian Union of Public Employees and the Commissioner.

The attitude of the miners changed, however, when they are questioned by the representatives of the Government of NS. The miners are very defensive and agitated when they are examined by the team of solicitors representing the provincial government. For example when Estabrooks is asked if a signature on a document is his, he does not respond with a simple yes or no, he states that it is a "possibility" (4942). When a representative from the government of NS questions Savidge, he clearly becomes defensive and instead of answering the questions he snaps back with questions or states that he has already answered that question previously.

In the examination of Deane and Conklin by solicitors from the Government of NS, there is evidence of the witnesses changing their responses based on statements made by the examiner. They change their answers when confronted with an excerpt from a

previously recorded interview.

The Examination of the Supervisors

Two out of the four supervisors who testified at the Inquiry were included in my sample. Both supervisors whose testimonies I analyzed also held the title of in-house mine examiners. They considered themselves to be miners since they would work alongside other miners, especially during overtime shifts. One of the supervisors, Dooley, attended the Inquiry with his solicitor, Blaise MacDonald. The other supervisor, Capstick, gave his testimony without counsel. At the Inquiry hearings the examiners had control over the dialogue through the types of questions they asked.

Each of the supervisors were examined by different inquiry counsel representatives - Dooley was examined by Merrick and Capstick was examined by Campbell - but the line of questioning was similar in both cases. The examiners commenced by taking background information, such as witnesses' qualifications, experience and employment history. They were also asked to give a description of what their positions entailed while they were employed at Westray.

The primary focus of the examination by the inquiry counsel representatives consisted of asking the witnesses about their knowledge of unsafe practices at Westray including lack of stone dusting, high methane levels, inadequate training of employees, use of torches underground, tampering with equipment and poor ventilation. The inquiry counsel clearly stated that in their capacity as in-house mine examiners and supervisors they had the power to remove workers from the mine when the safety regulations were not being followed.

More specific questions were asked to the supervisors regarding allegations about unsafe practices they engaged in. Although both supervisors were questioned on these allegations, there were significantly more claims about unsafe and illegal behavior made against Capstick. One of the allegations made by former employees of Westray about Capstick was that he would sleep underground during his shifts. Since Capstick denied virtually all of the allegations against him, Campbell asked why other miners and supervisors would make these false claims. After Capstick continued to deny the allegations Campbell stated "I guess in the end, Mr. Capstick, you would agree with me that there's no middle ground, either we believe the miners and these other fire bosses I've referred to or we believe you?" (9410).

The inquiry counsel questioned the supervisors about the role management played in placing limitations on their powers. They were asked to describe arguments they had with management including verbal abuse by Parry. The supervisors were queried about the lack of communication between supervisors and management. They were asked about the pressure exerted upon them for production and not safety by management. The inquiry counsel asked the supervisors about the fear of losing their positions at Westray if they expressed their safety concerns to management in their written reports or if they exercised their powers.

Supervisors were asked about their opinions on the 12 hour shifts, the bonus system, the occupational health and safety committee, and their opinion of the conflicting positions that they held being at the same time an in-house mine examiner responsible for safety and a supervisor primarily concerned with production. The inquiry counsel asked

them about their experience with mine inspectors including any discussions and knowledge of deceiving inspectors by stone dusting prior to an inspection. Although the witness responds negatively and no further follow up questions were asked, one of the supervisors, Dooley, was also asked by Merrick about any knowledge of political interference and any role that the mining culture may have played.

The representative for the United Steelworkers of America and the Nova Scotia Federation of Labour, Roberts, cross-examined both supervisors. Roberts' questions to the witnesses centered primarily on the alleged incidents of supervisors' unsafe behaviour and their failure as in-house mine examiners to ensure a safe working environment. In questioning Dooley about the witness's failure to take barometer and water gauge readings, Roberts asked "And you were aware that was part of your duties under the *Coal Mines Regulation Act*? " (8221). His questions also focused on the witnesses' opinions about management's lack of concern for safety and the inadequacy of mine inspectors.

Similar to Roberts, the solicitor for the Westray Families' Group, Hebert, asked the supervisors about their involvement in unsafe behaviour and their lack of response to unsafe conditions in the mine. During the testimony given by Capstick, Hebert makes the following comment, "I take it from your evidence that you would basically agree with me that you did not fulfill your duties as a mine examiner while you worked at Westray" (9429). Hebert also asked them about the roles government mine inspectors and management played at the mine.

The two supervisors were questioned by the representative for the United Mine Workers, MacArthur, who was not a lawyer and had a unique style of questioning the

witnesses. Similar to his examination of the miners, MacArthur periodically interjected his experiences as a miner when questioning the witnesses. The main focus of his questioning was on unsafe working conditions and illegal practices that they engaged in.

The Canadian Union of Public Employees representative, Wells, questioned both supervisors. His questions served primarily to clarify previous testimony given by the supervisors. In his examination of Capstick, Wells frequently quotes from the *Health and Safety Act* to establish the witness's opinion that Westray failed to follow the *Act*.

As representatives for the government of NS, Wilson questioned Dooley and Traves questioned Capstick. Their primary focus was to expose the supervisors' knowledge of unsafe conditions in the mine, engagement in unsafe or illegal practices and their lack of reporting of these conditions. These conditions included high methane levels, poor ventilation, rock falls and inadequate stone dusting. During his examination of Capstick, Traves attempted to divert responsibility from the government to the members on the mine's health and safety committee when he quoted the committee's responsibilities from the *Occupational Health and Safety Act*. Since Capstick was a member of the committee for a period of time during his employment at Westray, Traves asked him questions about why he did not follow the *Act* and take action in response to unsafe conditions in the mine. When Capstick denied being responsible for training miners, Traves refers the witness to his previous interview with RCMP, where he stated that training men was part of his job description. The witness then states that he did in fact train people, but they should have been trained before they came to work for him.

The solicitor representing Dooley asks him to clarify an incident involving a rock

fall because there was a discrepancy between his reporting of the dimensions and that of the government mine inspector.

Overall, most of the questions asked of the supervisors were related to the issues of safety, responsibility and division of decision-making powers in the mine.

The Role of the Commissioner in the Supervisors' Testimonies

The Commissioner examined one of the two supervisors during the hearings. At the beginning of the examination the Commissioner stated: "Just a couple of questions, Mr. Capstick, if I might. I'll revert back to my day as a lawyer and say, 'Well, we will take up all the available time, eh.' But I won't do that. Just a couple of points" (9490). This comment by the Commissioner is interesting since on that day they ended the hearings early, and he might be asking questions to take up time. The questions he proceeded to ask Capstick were clarifications about the witness' previous testimony. Periodically, the Commissioner interrupted the hearings to obtain clarifications from the witnesses and references to page numbers.

The Commissioner commented to MacArthur, the representative of the United Mine Workers: "You can go home now, Mr. MacArthur. That's about all you wanted to hear, isn't it?" after a witness made positive statements about the union (9459). This comment indicates the Commissioner's opinion of the United Mine Workers interest in the Inquiry.

Demeanor of the Supervisors

When Dooley is examined by Merrick, the dialogue seems rehearsed. When asked a question about a miner's statement about him, he states that he had previously

read the statement and gives his response. This indicates that Dooley was familiar with the evidence that the examiner was referring to. When asked a different question, Dooley responded by stating that “we talked about this last night” (7814). Dooley and the inquiry counsel also frequently refer to each other on a first name basis which is unusual. The witness’s demeanor quickly changes when Merrick begins confronting him with allegations made by several miners. In response to Dooley’s defensive behaviour, Merrick justified his questions by stating “I’m asking you these incidents so that we can try to understand the atmosphere in the mine and what it was like in the mine” (7945). This defensive demeanor also surfaces when the other examiners confront him with allegations against him made by miners. Dooley attempted to deal with these allegations by recalling incidents of unsafe practices involving miners.

The other supervisor, Capstick also discussed the actions of others to justify his behaviour at the mine. Similar to Dooley, Capstick becomes very defensive when confronted with allegations made by miners. At one point, Capstick continuously interrupts Campbell until she finally states “let me finish my question” (9324). The witness also becomes sarcastic when questioned by Campbell about allegations about him tampering with the methanometer on a machine, to which he responds “Well, I guess I could do the impossible, couldn’t I?” (9394). This defensive and sarcastic tone is also exhibited with the other examiners. For example, when questioned by Roberts about allegations a miner made pertaining to his lack of safety procedures he states “Well, that’s strange. What did he do, follow me around?” (9409). To which Roberts responds “I’m just telling you what he testified, sir.” (9409). Another example is when he was

questioned by MacArthur on his familiarity with the *Coal Mine Regulation Act* and he responded to the examiner “I’d say probably not as read as you are in the *Act*” (9453).

The Examination of an Engineer at Westray

My sample included the analysis of the testimony of one out of the four engineers who testified at the Inquiry. The testimony selected for analysis was that of Trevor Eagles, an engineer in training who worked at Westray. He attended the hearings with his lawyers Robert Barnes and Kelly Sullivan. Other Westray Mine employees who testified at the Inquiry, but who are not in my sample, include one geologist, one training officer and the president of operations.

The witness was examined by Merrick, one of the inquiry counsel representatives. Merrick’s line of questioning was similar to that which he followed with other witnesses. After the background information was established, the primary focus of the questions was on determining the level of power Eagles had in approving actions taken in the mine and in making decisions. Examples of these types of questions include asking the witness if he was involved in or knew about ventilation tubing being blocked, fans being shut down and changes made to mine plans. Eagles responded that he was not involved in these decisions, he was not informed of these actions and he explained that the engineering department at Westray lacked control over these type of actions at the mine. The examiner then questioned the witness on who was making these decisions. Eagles stated that the underground mine manager, Roger Parry made the decisions in the mine and that although he expressed his concerns and suggestions to Parry, most of these were not acted upon.

Another topic covered by Merrick included unsafe practices in the mine such as lack of stone dusting, inadequate stoppings, the use of tractors underground, torches used in the mine, high methane levels and inadequate ventilation. He was asked how he responded to these unsafe conditions including to whom he reported these incidents. The witness was questioned on work he completed at Westray including his ventilation survey reports and sampling coal dust. He was questioned on the government inspector's responses to safety concerns and the company's inaction in complying with the requests made by the Department of Labour. He was also asked his opinion on why this happened at Westray, recommendations to prevent this from happening again and what he learned from this experience.

Following Merrick's examination of the witness, the solicitor representing the government of NS, Wilson, began his questioning. He attempted to show that the company was trying to deceive government mine inspectors when he asked Eagles about stone dusting prior to an inspection. He asked the witness specific questions on procedures he followed with respect to collecting dust samples, measuring methane levels and conducting his ventilation surveys. Wilson also suggested through his questions that the day before the explosion when Eagles received the results of the dust samples which indicated highly combustible levels, he should have informed the acting manager about these results.

The solicitors and the representatives for the Canadian Union of Public Employees, the United Mine Workers, the Westray Families' Group, the United Steel Workers of America and the NS Federation of Labour all asked the witness similar

questions. Their primary focus was on health and safety concerns. For example, Wells questioned Eagles on his knowledge of the *Health and Safety Act* when he worked at Westray, recirculation of air back into the mine and conversations he had with others about health and safety issues. MacArthur asked the witness about unsafe conditions at the mine such as the use of improper stoppings and high methane levels. He also asked the witness about employees fearing job loss if they made complaints about these conditions. In addition to questioning Eagles on health and safety concerns at the mine, Hebert asked questions which identified Roger Parry as the person with the decision making powers at the mine and suggested that Parry was inadequate in performing his duties as an underground manager. Hebert referred to inappropriate comments Parry made to Eagles coaching him on what he should write in his reports.

Barnes, one of the solicitors for Eagles asked questions which were meant to help his client by downplaying his role in the Westray Mine. The main focus of his questioning was to get the witness to clarify that the Engineering Department at Westray did not have operational control at the mine and that they could only make suggestions while others made the decisions.

The Role of the Commissioner in the Engineer's Testimony

Although the Commissioner did not examine this particular witness, he did play an active role during the hearing. The Commissioner periodically interrupted the dialogue for clarifications, reference numbers and page numbers. He asked the witness a number of technical questions related to safety issues. The Commissioner also made an interesting statement to Eagles before asking him to respond to comments about

ventilation systems. He stated: “you probably acknowledge yourself you are not an underground coal mine ventilation expert” (16568). It is worth noting that the Commissioner makes the point that the witness is not an expert immediately before the witness contradicts his comments. Upon hearing the witness’s response, the Commissioner makes it known that he disagrees with the witness. He states: “at the risk of giving evidence to myself, I’m not going to argue with you on that point” (16571).

Demeanor of the Engineer

The witness was very comfortable answering all questions asked to him. Even when he is questioned on not reporting the highly combustible results from the dust samples to the acting underground manager the day prior to the explosion, he justifies his actions in an almost rehearsed manner. The witness states that he received the results late in the day, discussed them with individuals in the engineering department and, aware of the absence of the regular mine managers, he tried to find the acting underground manager. He continues with these justifications when he states that “basically the numbers confirmed what a lot of people suspected, that there was high dust underground. Anybody that was down there should have and did realize that we had a dust problem. This put a number to what most people already knew” (16450).

At one point in the hearing Eagles was asked to give recommendations for changes to ensure that a situation like Westray would not happen again. Since he was told previously that he would be asked this question, he prepared a written, detailed list of recommendations. His ease in answering questions and his written notes show that Eagles was well prepared for the Inquiry hearings and knew what to expect.

The Examination of the Politicians

In my sample, four of the nine politicians who testified at the Inquiry were selected for analysis. The sample included: federal Deputy Minister Harry Rogers from the Department of Regional Industrial Expansion Canada, provincial Deputy Minister John Mullally from the NS Department of Natural Resources, the NS Minister of Labour Leroy Legere and John Buchanan, the Premier of the Province of NS in the years 1978-1990.

Commission counsel representatives, Merrick and Campbell, each examined two politicians in my sample. Although two different examiners questioned the politicians, the issues they focused on were similar. All four of the politicians were asked background information which included employment history, educational information and experience. The politicians were also asked to describe their positions and responsibilities as well as the role they played in the Westray Mine.

All politicians were questioned about political involvement in the mine including any contact they had with Westray officials. In particular they were asked to describe meetings or conversations that they had with the company representatives. Three out of the four witnesses were asked about the financing of the project with government funds, either federal or provincial. These questions concerned their role in the negotiations, their reasons for supporting the financing of the mine and arguments of the opponents. These three politicians were also asked to outline their knowledge about the involvement of other politicians in the Westray project, including Prime Minister Mulroney, two

consecutive NS Premiers, Buchanan and Cameron, and Member of Parliament Elmer MacKay. The NS Minister of Labour was not asked about funding issues since his department was not involved in the negotiations.

All four politicians whose testimonies I examined were questioned by the commission counsel on the issue of safety. Those that worked within a department were asked about any responsibilities their departments had in relation to health and safety. The Premier of NS was asked a more general question about where safety begins in private corporations and questions with respect to government regulators. Near the end of each of the politicians' hearings, the commission counsel also gave them an opportunity to express what they had learned from the Westray Mine explosion, what they would have done differently and if they feel any responsibility.

Two out of the four politicians, Rogers and Mullally, were questioned on the role of the bank in the Westray Mine project. Merrick questioned Rogers extensively on why the bank would not lend money to Westray without government guarantees on the loans and why his government agency did not inquire into this. In defending his department's lack of monitoring of the Westray project, Rogers stated that the bank monitored financial and general technical issues at the mine. Although Rogers did not comment on the bank's monitoring, Merrick questioned the adequacy of this monitoring since the bank had government guarantees on the money and its risk was minimal. In the examination of Mullally, Campbell questioned the witness on his department's obligation to notify the bank when the company was in default and asked him to explain why the tone of a letter to the bank about the situation at Westray was mild compared to internal documents in

his Department.

The commission counsel asked questions specific to the witnesses' particular positions in relation to Westray. For example, both the provincial Deputy Minister, Mullally and the provincial Minister, Legere were asked about their knowledge of the *Acts* governing their departments, including their specific powers and responsibilities pursuant to the various *Acts* and any violations that Westray committed against the *Acts*. Another example is the Minister of Labour who was asked about the mine inspectors within his department, including his contact with them, their training and how they fit within the hierarchy of power in the department. He was also asked to explain inspectors' inaction in following up on an order issued eleven days before the explosion. Campbell also asked him to explain the processes through which miners become certified and why mine managers Phillips and Parry were granted certificates without writing the required tests. Finally, the federal Deputy Minister Rogers was questioned about the fact that providing federal support to the Westray Mine violated federal policies which stated explicitly that the federal government was not to provide funding to mining companies.

A solicitor for the Department of Justice Canada, Colin Campbell, chose to question only one politician. He examined Rogers, who was the only politician from the federal government. The solicitor asked the witness questions in an attempt to clarify his previous testimony which led to inaccurate information in the media. Rogers was given the opportunity to explain that he was not under pressure from the Prime Minister (Mulroney) to support the Westray Mine project and that his objections to the project were based on budgetary not technical issues. The solicitor's questions seemed to be

designed to clarify the witness's previous statements and, perhaps, protect the Prime Minister.

The solicitor representing the NS Department of Justice, Traves, examined two of the politicians, Mullally and Rogers. Other than the commission counsel or the Commissioner, Traves was normally the last person to examine witnesses. An exception to this rule is when Traves examined Mullally immediately after the commission counsel had finished. Since Mullally was considered a provincial witness, Traves was allowed to examine the witness after the commission counsel had finished. In questioning the witness, Traves attempted to remove all responsibility that might be connected to the witness. This can be seen when the examiner gets the witness to admit he did not know about specific things at Westray, identify who should have known about them and what action that person should have taken. Responsibility is also removed through the questioning of Mullally when Traves suggests that the legislation is not clear and is open to interpretation. Another interesting observation about this particular hearing is that when Mullally was being questioned by Campbell, Traves interrupted frequently. The reason for these interruptions was to help the witness; they included objections to wording of questions and attempts at helping the witness formulate his answer. In the hearing, Mullally made statements referring to the preparation work he had completed with Traves. Based on these factors, it is obvious that Traves is protecting the interests of Mullally and his Department. When Traves questioned the federal official, Rogers, he asked a completely different type of questions. Traves clearly attempted to blame and lay responsibility on the federal government and Rogers's Department. This can be seen

through the examiner's questioning Rogers on his Department's inaction and when he points out that they had the power to inspect the mine, but failed to do so.

The representative for the Canadian Union of Public Employees, Wells, examined all of the politicians in my sample. Three of the hearings involved Wells asking the witnesses about political interference at the mine or with the Westray Mine project. For example, Buchanan was asked about his knowledge of political pressure to keep the mine open even in unsafe conditions. Another issue that emerged in two of the hearings pertained to the health and safety of employees. This is evident when Wells questioned Rogers about the role health and safety played in the approval of the mine application and his assumption that the provincial not the federal government was responsible for health and safety issues. The questions Wells asked Legere were quite different and focused on the government's failure to respond to the Union's concerns about a particular issue.

The representative for the United Mine Workers, MacArthur, examined Rogers. He questioned him on the political involvement of Cameron and MacKay in the Westray Mine project. Specifically he asked if their support of the mine might have been based solely on their need to generate political support and not on financial viability of the project. MacArthur also asked the witness to give a figure indicating the amount of money the government had lost because of this project.

Both the solicitor representing the Westray Families' Group, Hebert, and the solicitor representing the Nova Scotia Federation of Labour, Roberts, examined all four politicians. Similar to Wells and MacArthur, one of their primary focuses in questioning the witnesses was on political involvement in the Westray Mine. For example, Hebert

asked Rogers about the Prime Minister's support for the Westray project. Another example is when Roberts questioned Buchanan about the role both Cameron and Prime Minister Mulroney played in supporting the Westray Mine. Both solicitors also questioned the politicians about the lack of government action in response to the conditions at Westray. This included for example, questioning Legere about the inaction by the inspectors when violations were committed at Westray. A final example is when Hebert questioned Rogers on the Federal government's failure to monitor the Westray project and its reliance on the bank and the province of NS to protect federal interests.

The Role of the Commissioner in the Politician's Testimonies

The Commissioner examined two of the four politicians in my sample. The questions he asked the two politicians were specific to their positions. For example, Legere is asked about the reluctance of his Department to take any responsibility for the explosion. Although the witness is reluctant to respond, the Commissioner gets Legere to admit that after an order was issued to Westray on April 29, 1992, the inspectors should have followed up on the order, especially when there was an inspector on site seven days later who failed to check for compliance.

Occasionally, the Commissioner interrupted the dialogue in all of the politicians' hearings to confirm dates, page numbers and witnesses' statements. At the hearing of Mullally, the Commissioner played a more active role since he had to respond to frequent objections made by Traves. In response to one of the objections by Traves, the Commissioner challenges the commission counsel, Campbell, on her line of questioning when he asks "Where is this getting us, Ms. Campbell?" (11807). An interesting

comment was made by the Commissioner when he stated, “I didn’t get my answer”, in reaction to Rogers’s answer that \$80 Million from the federal government to fund a project is common (13500). This statement indicates that the Commissioner was not satisfied with the witness’s response.

Demeanor of the Politicians

All four of the politicians answered questions with caution. They would often respond to questions that suggested wrongdoing by providing justifications for their actions or inactions, placing blame on others, refusing to answer or avoiding the question. An example of a politician justifying his actions is when Buchanan is asked to comment on why the province of NS violated a federal policy and he justifies this by stating that conflict between the two levels of government is “historic” (14909). When he is asked if the mine was supported because individuals would benefit politically, he states that the reason for support for the project was job creation. Another example is when Mullally justifies his Department’s practice of using persuasion instead of enforcement with non-compliant companies by arguing that this practice occurred in other industries too. A final example is Legere who justifies his lack of knowledge of the *Acts* governing his department by stating that he relied on his staff and that a person in his position does not have to know those things.

The politicians did not accept any responsibility for the explosion at Westray while placing blame on others. For example, when Mullally is questioned on his role in advising the Minister on granting Westray a contract to extract an unlawful “sample” from a strip mine which was meant to help the company meet production contracts, he

takes no responsibility for advising the Minister and affirms that it was a decision made by the Minister. Another example is when Premier Buchanan states: “in government, all you can do is to rely on the competence of the people within your Department and the Minister” in response to a question about negotiations between Curragh and the Province regarding funding (14937). Yet another example is when Rogers explains why the bank and not his Department was responsible for monitoring the Westray Mine. He states:

The persons responsible are the banks and that was agreed at the beginning, and that's the nature of a guarantee. This is a proper description of roles. This is not, in any way, an attempt for me to obfuscate the accountabilities on this. The accountabilities are very clear. If there's going to be problems corrected, it's going to be done between the lender and their advisors and the owners and operators (13472-13473).

Although most of the politicians refused to respond to some questions, one of the politicians, the NS Deputy Minister for Natural Resources, Mullally, did not answer a particularly large number of questions. Even though he indicated in the dialogue that he had prepared for the hearing with the solicitor for the NS Department of Justice, Traves, he either was unable or did not want to answer many questions asked to him. His typical responses to questions include “I don’t recall” (11808), “I don’t remember” (11674), “I can’t say” (11768) and “I don’t know” (11708). When Mullally is presented with previous statements he made or documentation with his signature, he typically states he does not recall, adding that he does accept the evidence. In the hearings when he does make an attempt to provide an answer to an examiner, he typically gives a response that does not fully answer the question. At one point in the hearings Campbell becomes frustrated with his responses when she states: “But you seem to be missing the point of

my questions, Mr. Mullally. It's quite a simple question" (11769).

Some politicians were visibly upset when accusations are made against them or their government. For example, Rogers clearly became upset when Traves made allegations against the Federal government. He responded "Here you are again trying to lead the testimony in a direction that says somehow the Federal Government had some oversight responsibility that was -- that superseded the roles and responsibilities and accountabilities of others that are established constitutionally. And I just will not go down that line of investigation" (13537). Another example is Buchanan who repeats phrases such as "No, no, no, now come on" and continuously interrupts Merrick who is trying to suggest political interference in the Westray Mine (15012).

Inquiry Recommendations

The Westray Mine Inquiry report contains seventy-four recommendations. Most of the recommendations deal with very specific internal changes within coal mines and the state regulation of coal mines. Examples of internal mine changes suggested by the Inquiry include specific recommendations pertaining to ventilation systems, methane, coal dust and ground control. Other internal mine changes recommended are related to the private operator providing employees with job descriptions with specific references to safety, implementing an approved training program, documenting employee training and work history, abolishing all production incentive bonuses and replacing them with safety related bonuses and having acceptable emergency procedures.

A number of specific recommendations for the state regulators are suggested by the Inquiry. For example, it is recommended that there should be one regulatory agency

responsible for mining certifications and that no provisional certificates may be issued. The Inquiry advised regulators to review and bring up to date the certification process before approving any mine. The regulator should then develop a training model based on the accepted practices of the industry. There are also recommendations which state that with the changing technology the regulator should update regulations and inspect various aspects of internal mining issues, such as private training programs and ventilation plans.

Some recommendations made by the Inquiry addressed changes at the departmental and ministerial level. For example, there were recommendations made to review the roles of the NS Department of Natural Resources and NS Department of Labour and to increase communication between the two Departments. Another recommendation at the departmental level was that the Department of Natural Resources should examine its structure and eliminate its dual role as both a promoter and a regulator of mining in the province. It was recommended that the Department of Labour make specific changes related to their system of inspection, such as conducting inspections of the mine without notice, firing two specific inspectors and implementing an independent review process of inspectors. It was also recommended that specific changes be made to the *Occupational Health and Safety Act*. At the ministerial level, recommendations were made by the Inquiry which would clarify roles and responsibilities of ministers.

Recommendations pertaining to the legislation include the following suggestions: ensuring that safety is considered before underground coal mining permits are issued; organizing a legislative review committee to make certain that the legislation reflects current standards in the industry; allowing the regulator to have flexibility in performing

their job; having the federal Department of Labour work with the province to develop common legislation; increasing the educational requirements for inspectors and implementing regulations to eliminate smoking underground. The Inquiry also suggested recommendations dealing with the issue of corporate accountability. Richards (1997) contends that both the federal and provincial governments should examine legislation which would ensure that officers and directors of corporations are held accountable for safety in the workplace. As indicated in the recommendations, the legislative changes in the federal government need to be preceded by a study by the Department of Justice and by a review of the occupational health and safety legislation by the provincial government.

DISCUSSION OF THE FINDINGS

Discourse Style

Although both of the experts in my sample use scientific language, they try to make their testimony accessible. For example, McPherson and Mitchell often use examples to help explain what they are trying to convey to the Inquiry. Mitchell's testimony is peppered with such expressions as "gee wiz" (3107), "flea in ointment" (3107), "drop in the bucket" (3195) and with references to specific individuals as the "king" or "princes" (3115). This may be seen as his way to make his primarily scientific testimony more accessible or it can be interpreted as a tactic to avoid answering the questions that were asked by examiners.

Both of the experts introduce technical and catchy terms which the examiners

subsequently use in their questioning of the witnesses. For example, after McPherson introduced the technical term “pores” (1379) to refer to the area where gas is contained within coal, Merrick then used this term in his questions. Another example is Mitchell introducing the catchy phrase “snowed” when referring to the distorted picture portrayed by Westray management to the Department of Labour, which is then adopted in questions asked by several examiners including Merrick, Roberts and Wilson.

Various rhetorical devices were used by both the expert witnesses and the examiners in the hearings. For example, McPherson often repeats his statements which reinforces his scientific opinions regarding the mine. When Roberts questions McPherson, he frequently uses the phrase “I think you will agree” (1777) before asking some of his questions. This same phrase is also used by Hebert in his examination of Rogers when the witness is reluctant to agree with him. During Merrick’s questioning of Mitchell, the examiner frequently has to rephrase questions using the witness’s language in an attempt to get him to answer the question. Mitchell often tries to avoid the questions directed to him by restating his credentials and telling stories.

The experts in my sample often make general claims, supposedly based on their previous experience. For example, when Mitchell discusses mine explosions generally, he points to the miners’ mistakes, including smoking and the use of torches underground, as their cause. Mitchell also defends the actions of the inspectors by stating that they were trying to keep people employed and they were inclined to give the company the benefit of the doubt. He even justifies the problems with regulation of the mine stating: “this is how we grow” (2953).

Almost all of the miners use language that is accessible to most people without any knowledge of mining. The majority of the miners do not generally use the specialized mining terminology that was prominent when the experts gave their testimonies. An example is Estabrooks using the term gas levels instead of the more specific and precise term methane levels. When Campbell is questioning Estabrooks, she adapts to his language usage by incorporating some of the terms that he introduces. The exception to the miner's use of language is Savidge who introduces technical mine survey terms when he describes the Westray Mine. When Savidge is examined by Campbell he frequently asks her if she is following his explanation of technical and sometimes detailed information. Savidge often asks these types of questions when examined by Campbell, but only once when questioned by other examiners. It is interesting to note that Campbell is the only female solicitor who examined Savidge.

Both of the supervisors used accessible language, similar to that used by the miners. Occasionally when the witnesses used specific mining terms they would typically explain the definition of the terms. An example is when Capstick used the mining jargon word "greenhorn" and explained that it was a term used at Westray to describe their coworkers who were former hard rock miners. Other slang terms and phrases were used by the supervisors, such as Dooley referring to the underground managers as the "four horse men" (8127). At the hearings, the supervisors use various discursive devices to legitimize their actions and inactions when questioned by the examiners. For example, when Hebert makes the comment to Capstick that he did not fulfill his duties as an in-house mine examiner while employed at Westray, Capstick

states, “No. I don’t feel I did. I don’t feel - - There was a lot more we could have done and our hands were tied” (9429). In this statement the witness begins the response by using “I” and then switches to “we” which can be seen as a way for the witness to diminish his personal responsibility by pluralizing his response. In the discourse the supervisors often responded to questions by discussing others in the mine instead of focusing on themselves.

The language used by Eagles, the only engineer in the sample, was very accessible, with the exception of occasional technical terms which he typically explained. Similar to the supervisors, the witness used the hearings to justify his behaviour at Westray. A perfect example is his statement, which is quoted in the previous section, about the test results confirming what people already knew. This shows how Eagles attempted to justify his lack of action in reporting the test results and tried to defuse responsibility. He also uses various discursive strategies to divert responsibility when, for example, he repeats that to have a safe work environment, the concern for safety must begin at the top of the hierarchy of the organization, including the managers.

The politicians that I examined used accessible language when they were questioned at the Inquiry hearings. In the discourse, the politicians use various devices to justify their actions. For example, when Buchanan was questioned about political interference in the Westray project, the examiner is forced to ask the question several times because the witness avoids the questions by stating why he is unable to answer, quoting “old sayings” and discussing unrelated information. He also comments that

“there’s a perception out there that when something occurs, Government and politicians must in some way be blamed for it” (14917). Another tactic employed by the politicians is to tell a story or give an example when asked a difficult question. This practice can be seen when Rogers tells a story in response to questions on the conflict of interest that existed when his Department was simultaneously representing the Devco mine and helping to develop a new mine. Rogers also justified his Department’s actions by stating that this is simply the “nature of government” (13374).

The recommendations of the Inquiry were at times very scientific and technical, similar to the testimonies of some witnesses and in particular, the experts. An example of this is when the Commissioner recommends very detailed procedures in the monitoring and control of methane levels in coal mines. In order to make some of these recommendations more accessible, he provides brief descriptions preceding some of the more technical recommendations. Generally, the recommendations avoid more controversial or political issues and define problems in legal and technical terms.

Risk

Both of the experts advocate the use of science and technology such as methanometers in order to govern risk. According to McPherson’s testimony risk is constructed and controlled through scientific calculations. He advocates the use of scientific technology such as computers to generate more accurate calculations and help minimize risks. Normal, levels of risk seem to be assumed by McPherson when he states that frictional ignition is common in mines. He states, however, that even this risk can be addressed through proper ventilation and safety procedures. The other expert’s testimony

constructs risk as calculable through the examination of costs. Mitchell argues that safety is necessary to have a profitable mine and that it is often difficult to weigh costs and benefits when risk is unknown. According to his testimony, Mitchell believes that the workers at the Westray Mine had choices. He states that if the miners knew it was dangerous or unsafe it was their responsibility to leave.

In his justification of levels of risk, McPherson uses scientific knowledges and techniques to show how the measurement of methane levels, calculations and ventilation systems can be used to minimize risk. Although Mitchell also uses scientific explanations in his testimony, he maintains that the miners need to reduce their levels of risky behavior. This is evident when he states that miners need to focus on safety not their “pocketbooks” (3066). In contrast, McPherson does not focus on the cost-benefit calculations by the miners, but concentrates on the cost-benefit calculations tabulated by the corporation. He concludes that at the Westray Mine the company in its calculations of risk attached greater value to the need for coal production than to safety.

In hearings of the miners, the issues of risk are frequently raised. For example, Campbell queries MacKay about an incident in the mine when he engaged in an unsafe act. She asks MacKay if he understood “that it wasn’t a good procedure” (7071-7072) and he answers “Yeah” (7072). When asked why he would engage in such an act, he states that he did not want the person that told him to do it to be upset with him. On another occasion, a representative of the NS Department of Justice, Endres, addresses the following question to Estabrooks: “So that despite the fact that you had training as a mine rescue man, despite the fact that you had training some years ago, I understand, as a

mine examiner, you continued to practice unsafe work underground because you needed the money?" (4927-4928). Continuing this line of questioning he then asks Estabrooks to describe incidents where he engaged in unsafe work practices and to admit that most workers at the mine engaged in dangerous work practices. Estabrooks attempts to justify these practices by stating that he needed the job due to financial reasons and that he and others engaged in these practices out of fear that they might lose their job. Although Estabrooks states that he thought of quitting, had nightmares about the mine before it exploded and said prayers before entering the mine, when Campbell asks him: "So is it fair to say then, Mr. Estabrooks, that you never felt pressure to do work that you didn't feel safe to do?" (4889), he replies "Where I could see where it was bad, I would not, no." (4889). In other words, Estabrooks appears to be afraid of incriminating himself and confirms that when he did not feel safe, he would refuse to do that particular job in the mine. Campbell also asks Estabrooks why he did not quit and Estabrooks states that he did not quit due to financial reasons. When asked if he had any other employment opportunities if he had quit, Estabrooks states that he did not.

To illustrate the mine management's attitude towards miner's health, Estabrooks tells the inquiry that when he was in the hospital because of an accident at work, a representative from Westray came to the hospital to ask him to return to work early to save the company money. Although Estabrooks did not return to work until his doctor said that he was able to resume work, the fact that the company attempted to get an employee back to work before it was medically safe, suggests where the company's priorities lie and the risks that they were willing to take.

Issues of risk emerged in the testimonies of the supervisors. Both of the witnesses state that they engaged in unsafe practices and typically did not bring their concerns to management because they feared losing their jobs. At the hearings Capstick explains that a lot of miners, especially those who had relocated to Pictou County, continued to work at the Westray Mine because of the higher wages and the hope that conditions would improve. When questioned about working in unsafe conditions, Dooley states “I was trying to manage the risks that were put forth to me the best that I could” (7928). He goes on to explain that he dealt with situations that were imminent and that he could observe, such as poor roof conditions, while he tended to ignore other conditions such as coal dust accumulations.

Various justifications and explanations are given by the supervisors to explain why they continued to work in a dangerous environment. For example, when Capstick admits to taking risks by engaging in unsafe practices, he justifies this by stating that he would only take these risks if he were “finishing up a small job” (9397). Dooley justifies working in dangerous conditions by stating that he “just loved to mine” and he wanted to help the mine succeed economically (7891). At the hearings, Dooley also states that he and some of the other miners used humour as an outlet for stress relief.

At the hearing of the engineer in training, the issue of risk is also raised. When asked why he worked in the unsafe conditions at Westray he justifies taking risks by pointing to his lack of experience and his confidence in management, inspectors and experienced miners in creating a safe environment. Eagles explains that he did not report unsafe conditions in the mine to inspectors out of fear of losing his job. Asked about the

“mental adjustment” that was needed to accept risks at the mine, Eagles responds by stating that it was easy to accept risks since he became accustomed to an unsafe work environment and to unsafe practices at the mine.

In the hearings of the politicians, the issue of risk is sometimes discussed in terms of financing the mine. For instance, Rogers discusses this type of risk when he addresses the problems with geological faults’ leading to increased labour and a decrease in profit for the company. Risk is also addressed in terms of health and safety, which can be seen in Legere’s suggestion that to reduce health and safety risks in coal mines more education is needed. He clearly indicated, however, that these risks cannot be completely eliminated, when he states: “accidents do happen” (15590). In the hearing of Buchanan, the witness discusses the dangers and the risks that are accepted by miners in the following quotation:

And you know, mining is probably one of the most dangerous vocations that a person can be involved in . . . the only thing you can conclude is that mining is a very, very dangerous business. But it’s -- you know, people say to me in Ontario, “Why do these things happen in Nova Scotia? Why do men go underground?” Well, it’s a way of life, I guess. And it was in my family’s history, and it’s -- that’s how miners -- that’s their way of life. And the dangers are there, and they know the dangers are there (15001-15002).

A certain amount of risk is clearly seen as acceptable and incorporated into the miners’ outlook.

The issue of risk is evident in the recommendations of the Westray Mine Inquiry primarily through the emphasis on the need for more rules and regulations. Moreover, the recommendations stress the importance of miners’ awareness of risks and their ability to handle these risks. For example, in order to minimize risks in coal mines, it is

suggested in the recommendations that private mining companies have a training program which meet specific criteria and that a program be developed to educate miners on the dangers of smoking underground. It is also recommended that to minimize risk, provincial and federal regulators should play a more dominant role in enforcing the regulations and that there be an increase in regulations governing all aspects of the establishment and operation of coal mines.

Private - Public Distinction

A number of recommendations made in McPherson's expert testimony address state-business relations. He suggests that initial plans of the mine should be submitted to the government before finances are provided to the company and that there needs to be a stronger involvement of the state in ensuring mine safety. In addressing mine safety issues, he recommends changes to the legislation in NS based on scientific studies and calculations. For example, McPherson recommends increasing the legally required air velocity in coal mines to at least ".4 meters of a second greater in the headings" in order to reduce methane layering (1743). Based on what McPherson calls a "disregard for safety" at Westray, he recommends that mines be subject to stronger responses by inspectors which includes the use of sanctions (1710). A stronger response by government inspectors is also suggested by Eagles who additionally states that there need to be changes made to the provincial *Coal Mines Regulation Act* to make the *Act* more inclusive and "have the *Act* cover any possible situation that could come up underground" (16591). This should remove the possibility of ambiguities and discretion involved in granting exemptions to companies.

Although Eagles made suggestions to increase state interventions in private corporations, he also made recommendations for in-house regulation of private companies. His recommendations included stressing the importance of in-house safety committees, training programs and policies. One of the in-house policies suggested by the engineer included a set of processes which would require various groups of people within the company to approve any changes in the layout of mine plans.

Mitchell suggests in his expert testimony that a policy similar to one in the United States should be adopted where inspectors are held accountable for their mistakes and may be punished through the use of various sanctions such as fines. He then suggests the need for more public inspectors examining mines for longer periods of time. Importantly, however, he recommends that these inspectors should be independent from the government. He argues that this would reduce their fear of being penalized by the government for dealing too harshly with a corporation. Although he calls for increased state regulation and intervention, he also contends that private corporations should be expected to take more responsibility for ensuring safety at the mines they operate.

In Merrick's examination of Dooley, the witness briefly touches upon private-public issues when he discusses why the explosion occurred at Westray. According to Dooley, part of the cause was the state involvement in both approving the mine and in inspecting the mine. Although he does not elaborate further on these points, he does briefly mention the need for "better policing" by the Department of Labour (7925). Consistent with his statement suggesting "better policing" by government inspectors, the witness expressed his concerns for a private company being responsible for safety in a

mine. He argued that there would be a conflict of interest and that in-house safety representatives could never be independent when performing their duties.

One of the examiners, the solicitor for the government of NS, Traves, tries to downplay the liability of the province when he enumerates the responsibilities of the mine's health and safety committee. He quotes from the *Occupational Health and Safety Act* to emphasize to Capstick that the committee is responsible for "[e]stablishing at the workplace a prevention program that includes information and training in health and safety matters and making recommendations to the employer, the employees, and any person for the improvement of the health and safety of persons at the workplace" (9465). Although Traves did not deny the government's role, he clearly attempted to minimize its responsibility when he pointed to the obligations of the health and safety committee within the mine, as stated in the *Act*.

In the hearings of the politicians, the examiners attempted to problematize the role of the government in the Westray Mine, but these claims were typically disputed by the politicians. For example, Merrick questioned the federal government's position in simultaneously representing the Devco mine and reviewing an application for a new mine. This particular government practice was justified by Rogers when he stated that these situations are "inherent in what governments do all the time" (13374). Another example is Legere's disagreement with Campbell, Roberts and Hebert when they problematized the role of the government mine inspectors at the Westray Mine referring to their failure to respond to conditions at the mine. A final example is when Campbell calls into question the reluctance of the Department of Natural Resources to respond to

violations at the mine and Mullally justifies the Department's actions by stating that they were trying to resolve problems, that shutting down the mine would affect workers and that in other industries the approach of persuasion instead of enforcement is also used.

The role of the state's involvement in providing contracts with Westray, including financial assistance packages, was called into question in the hearings with the politicians. Although the witnesses do not voice opinions, commission counsel questioned Rogers, Buchanan and Mullally about the logic behind the take or pay agreement with the province which stated that the government-owned NS Power Corporation would take or pay for an additional 275 000 tonnes of coal per year on top of the 710 000 tonnes of coal per year that was needed. In a further attempt to problematize the contracts that were made between the state and Westray, Merrick asked one witness to discuss the opposition to government funding of the mine. Although the Rogers did not voice an opinion, he stated that people in the mining industry were opposed to the government funding and one of the reasons they gave was that it would be against government policy which stated that the government would not give financial assistance for mine development since there were "adequate incentive and markets" for private companies (13332). It was only when Merrick called into question the fact that the company only invested a fraction of what the government provided did the witness provide any indication that he agreed by stating, "you'd like to see more cash from the company itself" (13339). When Merrick attempted to problematize the violation of federal government policy by providing Westray with financial assistance, Buchanan responded that provincial violations of federal policies were "historic" (14909).

The political involvement of key players in the mine was called into question. Although Merrick does not receive a direct answer, he asked the witness if the Westray Mine was approved due to political support. He asked the witness to describe the role of key political figures in the Westray Mine. When he discussed the roles of the politicians and the support they gave for the mine, Rogers defends their actions. Referring to Cameron and MacKay, the witness stated that they were only “acting in the interests of their constituents” (13509). The witness also stated that the support MacKay gave for the Westray Mine including trying to speed the process for the company was an “appropriate role” and that Cameron’s threats of pressure from the Prime Minister’s Office to government departments was “not unusual” (13359, 13363). Although the witness does not comment, Hebert asked Rogers if the Prime Minister was returning a favour for MacKay when the federal government gave funding to Westray. In defense of the Prime Minister’s support of the mine, Buchanan indicated that “Because he had been the Member of Parliament for the area, and he had a sincere -- he always had a sincere desire to have something happen in this area because of the high unemployment of what -- I think it was about 30 percent at the time” (15050).

At the hearing, Buchanan often defended political involvement and governmental funding for the mine by referring to the fact that job creation was in the public’s best interest. When explaining the political support of the mine he stated that “the major reason would be to create a -- create a tremendous number of jobs. That’s one of the major reasons. When you have a resource, you use that resource in the most responsible way you can to create jobs. That’s done in every province of Canada” (14910). Later in

the Inquiry he asserted that political support for job creation was normal. When questioned further on this issue by Merrick, Buchanan explained that politics cannot be separated from the public good since job creation benefits both the public and politicians.

The state approval process for the mine was problematized in the Inquiry. Merrick challenges the logic of the Federal government approving funding for the mine without examining detailed mine plans, not exploring the issue of safety and for not inspecting the mine after the money was given to the company. In response, Rogers claimed that the Province was responsible for dealing with these issues adding that the bank also had a responsibility to protect the federal government's interests. The examiner criticized the fact that the federal government suggested that the bank was protecting their interests since the bank was not legally obligated and were guaranteed their money without any risks. He also noted that, according to the contract, the federal government had the power to inspect the mine. Although Rogers primary response was to state that the federal government was not responsible, he did call for the government inspectors and the Department of Mines to perform their responsibilities.

Some of the examiners problematized the role of the state in providing the Westray Mine with a contract to extract a "sample" from an open pit mine in the hearing of Mullally. Although Mullally admitted that the contract was not a sample and that it was granted to Westray so that they could meet their production quota, he stated that this practice of accommodating a private company, including the changing of regulations for a company, was "not unusual" (11820). Campbell expressed her views on the state involvement in the Westray Mine, referring specifically to the contract for the open pit

mine in the following quotation:

It just seems to me, Mr. Mullally, that it mattered not what this company did as an operator. It mattered not whether they were in violation of the Mineral Resources Act, that it appears that the Provincial Government was prepared to continue paving the way for this company (11784).

Although the Inquiry tended to be focused on the safety issues within the mine and the personal performance of the government inspectors rather than on broader issues of the role of the government in regulating work place safety, some key players in the Inquiry hearing expresses their views on the role of the state in private companies. For example, Merrick's support for increased state regulation is captured in the following quotation:

One of the troubling aspects of this has been the fact that by a closer regulatory supervision, some of the problems that may have been factors in this explosion might well have been caught or identified or at least remedial action could have been initiated sooner than it was had a more comprehensive and competent regulatory review been carried out (13490).

Although Rogers suggests that state regulators should preform their duties, he also states the importance of the role private operators play when he advises that the Inquiry "focus on the roles of the people who ran the place and how they ran the place" and not as much on the financing of the mine (13495). A final example is Legere who suggests a closer state involvement in private companies in educating them on health and safety issues but he clearly states "That no matter what procedures we have in place, no matter how diligent we are, accidents do happen. We can look back and in hindsight say that possibly they could have been prevented. We can do that with every fatality" (15590). Although the players had different views on the level of state involvement in private companies, all

of them suggested that the state does play a role.

The recommendations from the Westray Mine Inquiry touched on some of the issues related to the public/private distinction. A number of internal changes pertaining to mining by private companies are suggested, but many of these recommendations also indicate that an external regulator be involved in monitoring and enforcing the changes. It can be argued that based on the recommendations from the Inquiry, there is a call for increased state regulatory intervention in private corporations, but the contentious issue of providing state funding for private corporations was not addressed.

CONCLUSION

Foucault, Governmentality and Discursive Production of an Inquiry

A key factor in this analysis was Foucault's (1980c) description of power as a complex network and not a tangible attribute. This conceptualization of power directed the study in a way which allowed me to examine all the participants in the Inquiry hearings as co-producers of the Inquiry, not just those with formal rule making authority, such as the Commissioner. Based on Foucault's (1980b) depiction of the inseparable nature of the relationship between power and knowledge, I was able to begin to structure this case study. More specifically his power/knowledge concept pointed to the importance of discourses of knowledge in the exercise of power, including various rules and techniques (Foucault, 1980b). Through my examination of the Inquiry transcripts, I was able to observe how different rationalities and knowledges become part of the governing discourse.

The governmentality framework has provided me with concepts and ideas that helped to guide this analysis. The idea that members of society become part of governing is applicable to the study of inquiries as a form of governing. The public becomes part of governing through their participation in inquiries. I focused on two aspects of this participation. Firstly, in my study various groups of individuals were able to express their views in a forum which reviewed the governing process with respect to the mining industry. The Westray Mine Inquiry is an example of reflexive government in that there was a review of the problems with governability in a particular area and changes were suggested in the form of the final recommendations. Moreover, the Inquiry allowed for reflexive thinking on how things were rationalized and whether the underlying rationality of governing needs to be readjusted (Dean, 1999). Secondly, individuals participating in the Inquiry were part of governing because they had to govern their own actions at the hearings to be consistent with the practices of the Inquiry. Participation in the Inquiry hearings requires participants to adjust their testimonies so that they fit within the Inquiry framework. My observations with this respect are similar to what various scholars, such as Mannette (1988), have noted (as described in Chapter 2).

Through the analysis of the Westray Mine Inquiry, some aspects of the power-knowledge nexus become more clear. It became evident that the most powerful form of discourse during the Inquiry was primarily scientific and technical. This began with the experts, who were the first group of witnesses to testify. The mere ordering of the witnesses whereby the expert witnesses testified first seemed to set the tone and a dominant discursive framework for the hearings. Throughout the Inquiry, the participants

were able to refer back to the primarily scientific testimonies presented by the experts which served to reinforce this type of discourse. There were, however, other forms of knowledge and modes of discourse present in the hearings and it was interesting to observe how they negotiated their place and meaning within the Inquiry. Even though not all types of discourse at the hearings were translated into recommendations, the openness of the Inquiry whereby the public could attend the hearings ensures some visibility to all types of discourse at the hearings. During the opening of the Inquiry, when there is typically a significant media presence, the Commissioner allowed each party with status to briefly introduce themselves (Anthony and Lucas, 1985). This is another way in which the Inquiry attempted to ensure visibility to the various parties.

In the sample of testimonies by former Westray mine employees, which included miners, supervisors and an engineer in training, work related discourse surfaced. During these hearings, the supremacy of scientific discourse emerges through the fact that the only former employee to be asked for recommendations to prevent such a mining disaster in the future, was the engineer in training. Individuals considered “experts” or those with access to scientific discourse, such as the engineer in training, were given the opportunity to make recommendations. Their scientific opinions seemed to be more valued than opinions of those witnesses who did not readily have access to this discourse. The importance placed on scientific discourse is evident in the comment made by the Commissioner indicating the significance of mining engineers in helping the Inquiry determine what information is relevant. The significant difference in time allotment given to the experts compared to the miners also allowed more time for scientific

discourse at the Inquiry hearings. My findings are in agreement with those of Taylor (1984) and Mannette (1988), who contend that the public inquiries they studied reveal that there was a higher value placed on expert testimonies, which was also reflected in the recommendations. In my study, the scientific and technical discourse which surfaced in the Inquiry hearings was the type of discourse that was indeed translated into recommendations.

The Commissioner describes the mandate of the Westray Mine Inquiry as “broad, encompassing all aspects of the development, financing, operation, regulation and supervision of the Westray mine” (*Westray Mine Inquiry Transcripts*, 5). Although all of these issues are addressed in varying degrees in the sample of hearings that I examined, they are not all included in the recommendations of the Inquiry. The Westray Mine Inquiry recommendations address most of the relatively narrow and technical issues problematized in the hearings. For example, internal mine issues such as ventilation, methane, stone dusting and training were addressed. Other examples include the Inquiry making specific suggestions related to regulatory agencies and inspectors. Although recommendations that related to the role of provincial ministers were also included, the broader issue of political interference in private corporations was not addressed in the recommendations.

Judging by the recommendations, the rules and tactics of the Inquiry allowed most of the narrowly focused concerns voiced by the key players to be heard. An exception is that recommendations did not address miners’ descriptions of verbal abuse by their superiors. Those voices that raised concerns about the broader issue of political

interference in the mine were not reflected in the recommendations. The examiners who attempted to problematize this issue included the representatives for the Canadian Union of Public Employees, United Mine Workers, Westray Families' Group, NS Federation of Labour and even the commission counsel.

'Analytics of Government' and Problematization of Mines Governability

The Westray Mine Inquiry was produced because certain governing practices were called into question as a result of a major mine disaster. The Inquiry can be seen as a way for the government to involve the public in the mechanisms of governing. To help examine this process, in my thesis, an analytics of government framework described by Dean (1999), was employed. As explained in Chapter 3, the first part of this type of analysis involves the identification of a problematization - in this thesis, the Westray Mine Inquiry was identified as the arena of the problematization. Then, in order to understand the process of governing through a public inquiry, the context of the inquiry and the role of the key players, including the tactics that they employed were examined. In the analysis of the Westray Mine Inquiry, the study of the context of the Inquiry involved a review of the rules and regulations of the Inquiry (presented in Appendix D) and how these were applied to produce and certify certain types of knowledge. The recommendations of the Inquiry point to a certain degree of reliance on the ability of the actors involved to govern themselves, which is an essential feature of modern approach to governing, analyzed by Foucault. The emphasis on educating and training miners in the recommendations is at the heart of liberal rationality since these suggestions made by the Inquiry indicate that if workers are provided with information, they will make rational

choices in agreement with the greater social project. A more specific example of this in the recommendations is the Inquiry's suggestion of an educational program to cease smoking in underground coal mines. In this recommendation, the state is advising the education of miners so that they will eventually govern themselves and will not need the government to enforce or regulate this. The analytics of government framework was useful in the analysis of the Westray Mine Inquiry in that it helped to focus the study and to reveal the governing process.

Risk Management

Risk management strategies discussed in Chapter 3 are also present in the Westray Mine Inquiry, both in the hearings' discourse and in the final recommendations. It may be suggested that in the Inquiry the issue of risk was translated into a mode of governing. It is dealt within the recommendations primarily through the emphasis on the need for more rules and regulations within coal mines and governing coal companies. This includes specific rules based on scientific knowledge, for example, monitoring levels of methane in coal mines. The recommendations also address an individual miner's knowledge of risks and their responsibility for management of risks. In a previous section of this chapter, the recommendation suggesting educating miners on the associated risks of smoking underground were described. This stress on placing responsibility on the individuals is consistent with literature on risk management where persons at risk are provided with knowledge so that they are able to manage risks. Accordingly, the Westray Mine Inquiry recommends that miners actively participate in governing risks by being provided with knowledge which enables them to be a part of

risk management.

Within the hearings' discourse the issue of risk was often associated with the notion of choice. Not all witnesses perceived choice in the same way. For example, the miners typically expressed their belief that they did not have a choice when working in unsafe conditions at the mine. This is evident when they point to the lack of other employment opportunities in their area. Politicians view the idea of choice differently. For instance, Buchanan argues that miners are men who know the dangers of mining and freely choose to become involved in that industry because of financial benefits involved. In the recommendations, the issue of choice is evident in suggestions related to the elimination of productivity bonuses and their replacement with safety bonuses. This recommendation essentially restructures the context of choice for miners since safety-orientated behaviour would be rewarded by financial gains.

Governance and the Private Sector

Similar to Ashenden's (1996) findings on the role of an inquiry in extending state information into the private/family realm, scientific discourse was utilized in the Westray Mine Inquiry as a basis on which to justify state intervention into private businesses. The scientific discourse was essentially used by the Commission to develop recommendations to increase state involvement in the private sphere. There is some tension between these recommendations and the trend of the deregulation and disappearance of corporate crime described by Snider (2000). As noted previously in this chapter, state involvement in private corporations is addressed in discussions in the hearings about the state assisting companies financially and its regulation of private industry. In the recommendations,

state involvement in regulatory practices is addressed, but issues of funding private corporations and the role of politics in the private sector are not included. As shown in Chapter 5, in the case of the Westray mine explosion political influence and funding might have played an important role. The minimization of this issue within the inquiry may point to the political limits of the Inquiry's mandate.

Although inquiry recommendations do not have to be implemented, the recommendations from the Westray Mine Inquiry seem to contradict Snider's (2000) claim about the current tendency to deregulate business. In fact, most of the recommendations called for an increase in regulation by the state and restructuring of the regulatory agencies to make them more efficient. The following two recommendations from the Westray Mine Inquiry address corporate accountability:

73. The Government of Canada, through the Department of Justice, should institute a study of the accountability of corporate executives and directors for the wrongful or negligent acts of the corporation and should introduce in the Parliament of Canada such amendments to legislation as are necessary to ensure that corporate executives and directors are held properly accountable for workplace safety.

74. The province of Nova Scotia should review its occupational health and safety legislation and take whatever steps necessary to ensure that officers and directors of corporations doing business in this province are held properly accountable for the failure of the corporation to secure and maintain a safe workplace (Richard 1997: 601).

Although Snider's claims of decriminalization, deregulation and downsizing of corporate crime are not explicitly supported by the recommendations from the Westray Mine Inquiry, the evidence gathered during the hearings seems to suggest that the actual level of regulation and enforcement applied to the Westray Mine was minimal. The Inquiry

recommendations may, therefore, reflect a reaction to the excessive deregulation. It is also worthy of note that all the criminal charges related to the Westray explosion were dropped and the Inquiry had to deal with all aspects of the disaster without being able to raise the issues of criminal responsibility. It did not, however, recommend any changes with respect to the criminal law, although it is within the scope of a provincial inquiry.

My Findings in Comparison to Other Research

As postulated in Chapter 3, public inquiries are a form of reflexive government which involve the public in the transformation of governing practices. The Westray Mine Inquiry fits perfectly into this description since it involved many individuals from the public in a process that eventually led to suggestions of changes in the way the state governs and individuals are motivated to govern themselves. According to Ashenden (1996), an inquiry may result from a state of crisis. The crisis that triggered the Westray Mine Inquiry was expressed by members of the public calling into question governing practices which they alleged allowed twenty-six men to die in the mine. The findings of my study are in agreement with the description of public inquiries, provided by Ashenden, in that it shows that the inclusion of individuals with diverse backgrounds, such as experts, miners and politicians, may constitute an attempt to reach a level of normality and legitimize the resultant recommendations and also to express the range of interests and concerns.

In comparing the analysis of the sample of testimonies with the recommendations from the Westray Mine Inquiry, it can be argued, however, that the recommendations did not reflect all the concerns raised in the hearings. This is consistent with Ashenden's

findings. For the same reason, I find Rodger's (1985) criticism of public inquiries, as outlined in this thesis in Chapter 2, partly justified. More specifically, I agree with him when he writes about how testimonies, especially those that are not technologically based are being dismissed by commissioners in inquiries. I disagree, however, with the way he describes inquiries as inherently unfair. For example, his harsh criticisms of public inquiries which reduce them to a pliable tool used by the government is not entirely justified since other key players in an inquiry can also use the hearings for their benefit. This can be seen throughout the hearings at the Westray Mine public Inquiry by the questions asked by the various parties with status and the responses of the witnesses. An excellent example of this in my analysis is the representative for the Canadian Union of Public Employees, Wells, questioning NS Labour Minister, Legere, not on the Westray Mine, but on Legere's lack of response to the Union's health and safety concerns pertaining to a different industry. One of the Union representative's primary goals was to get the Minister to explain why there was no response to these concerns and what else they could have done for the Department to react. Rodger's (1985) statement that information at inquiries is severely constrained by various factors such as rules may also be overstated. Although I do agree that there are clear constraints, the majority of the time when witnesses wanted to express their views they were permitted and if there was an attempt by the examiners to silence the witnesses, there was typically a ruling by the Commissioner which indicated that witnesses are allowed to express their thoughts. These rulings can be seen as a way for the Commissioner and the commission counsel to minimize power imbalances between some witnesses and examiners. Nevertheless, it

was clear throughout the hearings that they were subtly controlled by the examiners through the questions that they asked. There was a clear hierarchy of control represented - in the descending order - by the Commissioner, inquiry counsel and representatives of the parties with status.

The three functions of public inquiries as described by Taylor (1984) outlined in Chapter 2, were all evident in my study of the Westray Mine Inquiry. For example, his description of inquiries as functioning to designate the problem as “a case of human fallibility”, is evident in the Westray Mine Inquiry during the questioning of the actions or inactions of key players, especially the miners, supervisors and inspectors (Taylor, 1984: 93). Taylor’s depiction of inquiries as functioning to reestablish the picture of the state as being one “that embodies legal coherency and administrative rationality” can be seen in the nature of the seventy-four recommendations of the Inquiry that do not question the ability of the government to enforce detailed regulations (Taylor, 1984: 93). Finally, his claim that inquiries serve to produce “a discourse of unity and cohesion” is also true insofar as the recommendations are concerned. While during the hearings a variety of voices were heard and sharp disagreements were articulated, the final outcome was more in keeping with the restoration of “hegemonic order” than its radical redefinition (Taylor, 1984: 93).

Essentially, the recommendations can be classified as specific changes to regulations and represent what Burton and Carlen (1979: 7) label as “a system of intellectual collusion” which allows the symbolic repair to the disruption in the social order. In the Westray Mine Inquiry, there is much evidence of a shared understanding of

the relative worth of various types of knowledge between the Commissioner and the commission counsel. It is visible in the consistency of the types of questions they ask witnesses and the priority they assign to the expert knowledge. Note, however, that the workers' testimonies were not completely dismissed since some of their concerns were addressed in the recommendations, such as the need for stone dusting.

As explained in Chapter 4, Foucault (1991b) identified five key elements that can be used in the analysis of the rules governing discourse. In examining what is *sayable* and what is not, I have found that many changes to rules, regulations and legislation are expressed in the hearings and in the recommendations to improve the safety conditions in coal mines, but the possibility of abolishing underground coal mines due to their inherent dangerousness is not discussed. Although the idea of eliminating production bonuses and instead focusing on providing incentives for safety is *sayable* in the hearings and recommendations, it is stated in terms of economic gains for the company when the Commissioner (Richard, 1997: 188) clarifies that “[i]f properly instituted, such a safety incentive plan may well have its own productivity rewards”. The elements of the Inquiry discourse that are *conserved* rather than dropped or repressed include discussions of the immediate causes of the disaster, technical discourse, regulatory discourse and scientific discourse. This category also includes discussions which place blame on the workers and the inspectors. This is reflected in the recommendations when it is suggested that two particular mine inspectors “be removed from any function relating to safety inspection or regulation” and that there should be action taken to stop underground miners from smoking while in the mine (Richard, 1997: 506). Forms of discourses that appear to have

been repressed in the Inquiry are ones which focus on class inequality such as worker exploitation and domination of the miners by both the private corporation and the state. Overall, discourses considered valid - as reflected in the Inquiry recommendations - are the ones which are very specific and deal with technical or scientific issues. Another example of validation of a discourse is evident when key players in the Inquiry refer back to primarily scientific testimony of the experts at the hearings of other individuals. The types of discourse considered invalid include less technical and scientific issues such as verbal abuse in the workplace and the role of the state in providing private corporations with funding, which are not reflected in anyway in the final recommendations.

Discourses which are *reactivated* in the Inquiry include liberal discourses consisting of discussions about miners having choice. An example of this type of discourse is Premier Buchanan trying to explain the choice that individuals make to become miners when they know the dangers of underground coal mines. Finally, in the Inquiry there is also evidence of an *appropriation* of the discourse. This is evident in the hearings through the struggles for control over the discourse. Since the examiners represent different groups, they use their power of asking question to address the concerns of the parties that they represent. An example is a solicitor for the NS Department of Justice, Traves, asking provincial witness Mullally questions which remove any responsibility the witness may have in the Westray Mine and asks a federal witness questions which place blame on his Department. Another example of this struggle to control the discourse is seen in the provincial government representative's request to examine the witnesses last which enabled them to have the final word and address in their questions issues raised by other

parties with status.

The language use dimension of discourse which was also explained in Chapter 4 was useful in my case study. This type of discourse analysis aided me in identifying patterns of discourse used by key players through the use of specific words, rules, and adaption techniques in the Inquiry hearings (van Dijk, 1983, 1997a). For example, some examiners adopted scientific terms in their line of questioning which were introduced by expert witnesses. Through the study of the Statutory Powers, Rules and Regulations Governing Public Inquiries which is contained in Appendix D, I was able to identify and analyze the formal structures in the Westray Mine Inquiry.

The case study of the Westray Mine Public Inquiry has allowed for an in-depth analysis of a governing process that is not typically studied. Observations into how the participants become part of the governing process in the form of an inquiry were achieved through the examination of a sample of transcripts from the Inquiry hearings. The process through which the witnesses give their testimonies is revealing in that they must answer questions from the examiners who must follow the rules established by the Commissioner which, in turn has to be in agreement with the general legal framework for the inquiry. It is a flexible, but carefully regulated process that allows for public participation in the exercise of government, while preventing anarchy to the governing rationality. Since they are undertaken in response to a crisis, inquiries offer us an opportunity to discern certain routine assumptions, rules and practices that are normally invisible.

Concerns may be raised with the distinction made between the public and the

private sphere which was used in the analysis of the Westray Mine Inquiry. Based on her prison study into the “Cognitive Self Change” program with violent offenders, Fox (1999: 101) contends that since “governmental power is spread through agency’s practices and discourses, the distinctions we make between ‘state to civil society, the public to the private, the coercive to the consensual’ collapse”. Similar to her findings, there was difficulty in some situations in making the public/private distinction in my study into the Westray Mine Inquiry. For example, the state involvement in encouraging miners to manage risks through education programs shows how it becomes increasingly difficult to make this public/private distinction (Fox, 1999).

This thesis on the Westray Mine Inquiry constitutes a contribution to the literature on public inquiries. It did not involve a replication of previous studies on public inquiries, but searched for a new approach that would help to uncover those aspects of the inquiry process that could be analyzed in terms of governing practices. Key concepts from the governmentality literature contributed to the development of the theoretical framework and various aspects of qualitative discourse analyses were used in the development of the methodological guidelines for my study. This framework allowed me to give both a descriptive account of the Inquiry conduct and an analysis of the discourses and strategies involved.

Although a lot was gained from this study of the production of the Westray Mine Inquiry, if there were no time and cost restraints, more elements of the production process could have been examined. For example, interviews with the Commissioner, Inquiry Commission, witnesses and examiners may have revealed additional insights into the

production of an inquiry as a governing process. There were practices implemented at the Inquiry that I did not examine which may have had an impact on the Inquiry. For example, a procedure that was not included in my case study involves the way in which 30 miners out of a possible 120 were selected to testify at the hearings. The methodology selected for this thesis was qualitative in nature and only one public inquiry was studied. Although the entire Westray Mine Inquiry report was examined, due to the small scale of this thesis, a sample of testimonies was selected for analysis and the supporting documents such as written submissions were not examined.

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APPENDIX A

PARTIES WITH STATUS AT THE INQUIRY

Although seventeen parties were granted status at the Inquiry hearings, not all of them chose to exercise their right to actively participate in the hearings. The following is a list of the parties with status at the Inquiry and the individuals who represent each group, this list was taken from Richard (1997: 664):

- (1) Bank of Nova Scotia (represented by Ronald Pugsley and Mark MacDonald)
- (2) Canadian Union of Public Employees (represented by Robert Wells)
- (3) Curragh Inc. (represented by Bruce MacIntosh and Peter Atkinson)
- (4) Ecology Action Center (represented by Alan Ruffman and Howard Epstein)
- (5) Government of Canada (represented by John Ashley, Terrence Joyce and Lynn Gillis)
- (6) Government of Nova Scotia (represented by Reinhold Endres, William Wilson and John Traves)
- (7) Middle Management Group (represented by Robert Barnes and Kevin MacDonald)
- (8) Nova Scotia Federation of Labour (represented by Richard Clarke)
- (9) Roger Parry (represented by William Moreira and Robert Wright)
- (10) Gerald Phillips (represented by Bruce Outhouse and Gordon Kelly)
- (11) Property Insurers' Group (represented by R. A. O'Donnell and Pamela Callow)
- (12) Suncor (represented by Michelle Thibault)

(13) Town of Stellarton (represented by Roseanne Skoke)

(14) United Mine Workers of America (represented by Paul McNeil, Hugh MacArthur and Bob Burchell)

(15) United Steelworkers of America, Local 9332, (represented by Ronald Pink, Raymond Larkin and David Roberts)

(16) Westray Families' Group (represented by Anthony Ross and Brian Hebert)

(17) Gordon Williams

APPENDIX B

SAMPLE OF WITNESSES AT THE WESTRAY MINE PUBLIC INQUIRY

(ALPHABETICAL ORDER)

Witness	
Buchanan, Senator John	Province of N.S. Premier
Capstick, C. Bryce	Westray Mine Supervisor
Conklin, Aaron	Westray Miner
Craven, Alan	Vice-President and General Manager of Associated Mining Consultants Limited
Deane, Edward	Westray Miner
Dooley, Donald	Westray Mine Supervisor
Eagles, Trevor	Engineer-in-training, Westray Mine
Estabrooks, Edward	Westray Miner
Legere, Leroy	N.S. Dept. of Labour, Minister
MacKay, Thomas	Westray Miner

McPherson, Dr. Malcolm	Mine Ventilation Expert, hired by the Inquiry
Mitchell, Donald	Mine Fires and Explosions Expert, hired by the NS Department of Labour
Mullally, John	N.S. Dept. of Natural Resources - Deputy Minister
Naylor, Robert	N.S. Dept. of Natural Resources - Coal Geologist
Rogers, Harry	Canada Department of Industry, Deputy Minister
Sample, David	Westray Miner
Savidge, Ray	Westray Miner

APPENDIX C

EXAMINERS AT THE WESTRAY MINE PUBLIC INQUIRY INCLUDED IN THE SAMPLE (ALPHABETICAL ORDER)

Barnes, R.	Solicitor for Trevor Eagles
Campbell, Colin	Solicitor for the Department of Justice Canada
Campbell, J.	Solicitor for the Commission
Endres, M.	Solicitor for the Department of Justice Nova Scotia
Fitt, A.	Representing the Town of Stellarton
Gillis, L.	Solicitor for the Department of Justice Canada
Hebert, B.	Solicitor for the Westray Families Group
MacArthur, H.	Representing the United Mine Workers
MacDonald, B.	Solicitor for Donald and Jay Dooley
Merrick, J.	Solicitor for the Commission
Murphy, J.	Representing the Town of Stellarton
Roberts, D.	Solicitor for the United Steel Workers of America and the Nova Scotia Federation of Labour
Traves, J.	Solicitor for the Department of Justice Nova Scotia
Wells, R.	Representing the Canadian Union of Public Employees
Wilson, W.	Solicitor for the Department of Justice Nova Scotia

APPENDIX D

STATUTORY POWERS, RULES AND REGULATIONS GOVERNING PUBLIC INQUIRIES

The statutory powers, rules and regulations guiding public inquiries are important to examine when analyzing public inquiries as a governing practice. In this thesis, they are significant in the analysis of the production of the Westray Mine Inquiry. In this appendix a description of public inquiries including a discussion of the *Inquiries Act* of Canada and an explanation of the two types of public inquiries are provided. The statutory powers, rules and regulations discussed reveal the framework and the restrictions that inquiry commissions must work within to produce an inquiry report. Individual sections discuss regulations and processes involved in naming an inquiry, setting up of the inquiry committee, financing the inquiry, time lines, and participant funding. They also present a description of the various types of hearings that may be utilized in an inquiry and the procedural rules governing these hearings, such as subpoenas, cross examinations, submissions and the general procedures for each type of hearing. The final part of this section explains how an inquiry is typically closed. Throughout this section, examples of recent Canadian public inquiries are utilized to illustrate the statutory powers, rules and regulations governing public inquiries.

DESCRIBING PUBLIC INQUIRIES

In Canada, public inquiries are governed by the *Inquiries Act* (Ashenden, 1996). The *Inquiries Act* makes a distinction between public inquiries and departmental investigations. Part I of the *Act* refers to public inquiries, it states that “The Governor in Council may, whenever the Governor in Council deems it expedient, cause inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof.” (*Inquiries Act*, R.S., c. I-13, s. 2). This part of the *Act* is broad so that it can be utilized in the inquiry into many topics (Wilson, 1982). Part II of the *Act* refers to departmental investigations, and it provides that:

The minister presiding over any department of the Public Service may appoint, under the authority of the Governor in Council, a commissioner or commissioners to investigate and report on the state and management of the business, or any part of the business, of the department, either in the inside or outside service thereof, and the conduct of any person in that service, so far as the same relates to the official duties of the person (*Inquiries Act*, R.S., c. I-13, s. 6).

Inquiries that could be established under Part II of the *Act* are sometimes established under Part I. Advantages of establishing an inquiry under Part I of the *Act* as opposed to Part II is that the terms of reference are broader and the commissioner’s powers are stronger (Wilson, 1982). Similar to the *Inquiries Act* of Canada, each province in Canada also has the power to conduct a public inquiry. It has been estimated that between 1867 and 1972 there were approximately 1200 to 1600 major public inquiries held in Canada (Smith, 1982). The Law Reform Commission (1977) estimates that 400 commissions

were established under Part I of the *Inquiries Act* between 1867 and 1977 and 1, 500 established under Part II of the *Act* between 1880 and 1977. In reference to Part I of the *Act*, d’Ombrain (1997) writes that there were more than 350 federal public inquiries held between 1867 and 1996.

Public inquiries can be divided into two groups: policy public inquiries and investigative public inquiries. Policy public inquiries are based solely on the investigation of policy. Based on his research, d’Ombrain writes that policy inquiries:

. . . are usually established to achieve some or all of the following purposes: to prepare for fundamental changes in the direction of the country; to introduce new ways of dealing with important sectors of national life; to provide fresh insight into well-known problems; to balance unpopular decisions; and to buy time for dealing with controversial policy sectors (d’Ombrain, 1997: 93) .

Investigative public inquiries are utilized to examine a specific issue which may also lead to the examination of policy (d’Ombrain, 1997). According to Smith, investigative public inquiries “provide information, advice and recommendations for legislative policy with respect to an area of public concern.” (Smith, 1982: 565). This type of public inquiry may be formed due to “a specific event or activity which would be inappropriate for investigative consideration by either House of Parliament.” (Howe, 1999: 294).

Investigative inquiries are typically created very quickly due to political pressure, and judges are usually appointed as the commissioner(s). Key decisions about an inquiry such as selecting the members and developing the terms of reference are made very quickly at the beginning of the inquiry process after an event has occurred (d’Ombrain, 1997; Schwartz, 1997). Since public inquiries may have elements of both investigation

and policy analysis, some scholars recommend that this categorization of public inquiries should be changed. Alternatively, there could be a continuum of public inquiries ranging from policy inquiries to investigative inquiries with a combination of both in the middle of the continuum (Pross, Christie and Yogis, 1990).

STATUTORY POWER AND LEGISLATION

Public inquiries are developed by the government and the commencement of an inquiry is based on the authorization of an order in council by the Cabinet (Anthony and Lucas, 1985: 21; Wilson, 1982: 5). The Governor and Lieutenant Governors in council have the executive power to launch an inquiry. Statutory power can stem from the federal *Inquiries Act*, provincial inquiry acts or other statutes which contain powers to conduct an inquiry (Anthony and Lucas, 1985: 5-7; Wilson, 1982: 5). The *Administrative Law: Commissions of Inquiry, Working Paper 17* by the Law Reform Commission of Canada (1977) reviews the federal statutes that confer power to conduct an inquiry. Although most authorizing legislation is similar, there are some differences among various statutes that are quite revealing. For example, the legislation may direct the commissioner to report to the government or to the legislature. This difference determines if the report will be released based on the discretion of the government or if it will be automatically released to the public. Also, if the commissioner is instructed to “investigate and report”, the government’s ability to discontinue an inquiry prior to the development of a report is restricted (Anthony and Lucas, 1985: 12).

Each province has the power to conduct an inquiry within the constitutional

limits set by its public inquiry act. It would be beyond the scope of a provincial or a federal inquiry to conclude on criminal responsibility and to investigate outside their jurisdiction. Although provincial inquiries cannot have terms of reference within federal jurisdiction, they are permitted to make recommendations for federal laws (Anthony and Lucas, 1985: 6-7; Ontario Law Reform Commission, 1992: 82-84, 101-103; Pross, Christie and Yogis, 1990: 34-36). For example, item number 73 of the consolidated recommendations of the provincial Westray Mine Inquiry report by Richard (1997) states that the federal government should study and make changes to current legislation pertaining to corporate executives and directors being held accountable for actions or inactions of the corporation. A decision made during the Krever Inquiry into Canada's tainted blood supply stated that an inquiry has the ability to investigate into the actions or inactions of individuals although inquiries are unable to comment on criminal or civil liability of those individuals. Moreover, provinces also have the power to compel most individuals to testify at inquiry hearings, but exceptions include federal ministers and federal officials (Anthony and Lucas, 1985: 8; Jobb, 1999; Ontario Law Reform Commission, 1992: 48-49, 108-109).

NAMING A PUBLIC INQUIRY

The naming of an inquiry is an interesting process. An inquiry established under provincial and federal inquiry legislation can be called a royal commission. Although there is no legal difference between a royal commission and a public inquiry, the term royal commission has been utilized with inquiries examining national issues

such as bilingualism and biculturalism. The press release from the prime minister indicates whether the investigation will be an inquiry or a royal commission. Often, the shorthand naming of a public inquiry or a royal commission is created by the media. In developing a shorthand title for an inquiry, the name of the commissioner or a key player in the inquiry is often used. A recent example of an inquiry being named after the commissioner is the *Commission of Inquiry on the Blood System in Canada* (1997) which is often referred to as the Krever Inquiry. Short hand naming of inquiries can become problematic when for example, the same commissioner conducts more than one inquiry or two commissioner have the same last name. As an alternative, it has been suggested that the government develop a workable title that could be utilized by the media (Anthony and Lucas, 1985: 19-21; d’Ombrain, 1997: 90; Pross, Christie and Yogis, 1990: 31).

THE INQUIRY COMMITTEE

The Governor in Council through an Order in Council has the authority to appoint the commissioner, to state the terms of reference for the inquiry and to provide any instructions that may be needed to conduct the inquiry. In the appointment of a commissioner or commissioners (hereafter referred to as the commissioner), a decision needs to be made on how many are needed for the inquiry. Then, the commissioner is selected based on criteria such as their abilities to explore the subject of the inquiry and their independence from the subject. The terms of reference are then developed and given to the commissioner. The terms of reference must be written carefully to ensure

that they are neither too broad nor too narrow (Wilson, 1982: 5-10).

The commissioner must then select a committee for the inquiry at the beginning of the inquiry process. One of the first people selected for the committee is an executive officer who is often referred to as the inquiry secretary who controls the administrative part of the inquiry (Anthony and Lucas, 1985: 21-23; Wilson, 1982: 12-13). The commissioner and the executive officer should develop a “policy and procedures” statement containing the commissioner’s name, a list of the senior staff, the terms of reference, the commission’s policy on collecting information, and any other information that the public may need to know such as the details pertaining to public hearings (Wilson, 1982: 17-18).

Selection of counsel and a chief technical advisor to examine technical evidence for the inquiry is an important task for the commissioner since these individuals play an essential role in the inquiry. The inquiry counsel and the chief technical advisor aid in the commissioner’s preparation for meetings with the public and they aid in the hiring of other members for the inquiry staff. Depending on the size and structure of the inquiry, the following positions may be filled: a personal secretary to the commissioner, research staff, financial officer, librarian, community relations officer, public relations personnel and word processing personnel. If it is necessary, the commission is also permitted to hire outside researchers to complete reports on specific aspects of the inquiry. Before hiring any staff member for the inquiry, that person must be questioned about any conflicts of interests or biases that may prejudice the inquiry (Anthony and Lucas, 1985: 23-28; Pross, Christie and Yogis, 1990: 55-58; Wilson, 1982: 13-15, 18-19,

33). While participation in an inquiry provides a challenging experience, it may be difficult to obtain the most qualified people to work on an inquiry as they will only be needed for a specific amount of time. Staff members may be obtained through a secondment of employees currently working in various government departments (Anthony and Lucas, 1985: 29-30; Pross, Christie and Yogis, 1990: 55-56; Wilson, 1982: 19).

FINANCIAL AND TIME LINE CONSIDERATIONS

Financing of the inquiry can originate from a departmental budget or a general government budget. Budget funding can be problematic since it normally requires exact budgeting figures early in the inquiry process. Although commissioners are always required to provide a preliminary budget to the government, it is difficult for them to anticipate all of the costs that may arise when, for example, they may not know the exact length of the inquiry (Anthony and Lucas, 1985: 41-44; Wilson, 1982: 15).

At the commencement of an inquiry, a reporting date may be set by the government. An informal guideline of the timing of the inquiry must be developed by the commissioner. The commissioner must decide when the inquiry will commence, the length of each phase, the length of the break between phases and the length of the entire inquiry. The commissioner may divide the inquiry into phases so that all evidence on a specific topic is presented at the same time. The time line of the inquiry is important since it will help with things such as staffing issues and giving participants sufficient notification of when they will present information at the hearing (Anthony and Lucas,

1985: 58-63, 70-72).

PARTICIPANT FUNDING

Participants in public inquiries require resources since participating in inquiries may be both time consuming and expensive. The resources required by the participants are dependent on the role the commissioner assigns to them. For example, if a judicial approach is selected, participants will require a substantial amount of resources for both research and legal representation. Alternatively, if the commissioner states that participation will take the form of monitoring the proceedings, fewer resources would be required. The government may impose conditions on the allotment of funds that may specify a minimum number of individuals that a group must represent or require groups to join together. Forcing groups to create coalitions can be problematic since the individuals or groups may have different views that cannot be reconciled. Those in support of coalitions for the purpose of government funding argue that it is a way for more money to be allotted to research since there will be less duplication of studies and review of materials (Anthony and Lucas, 1985: 54-58).

The actual allotment of funds to specific groups can be performed in a number of ways. After the commissioner reviews and accepts a proposal for funding, the application can be sent to either the government or an inquiry funding committee for final approval. Another way to allot funds is to utilize a matching formula in which the inquiry gives a specified amount of money up to a maximum if the group is able to raise a

specified amount of money. Smaller amounts of funding may be given to participant groups on a case by case basis (Anthony and Lucas, 1985: 54-58).

PRELIMINARY HEARINGS AND INFORMAL MEETINGS

Preliminary hearings may be held to help the commissioner in making procedural decisions. For example, preliminary hearings may be used to help the commissioner define the scope further or to help the commissioner decide on the timing, procedure and participation at the hearings. The preliminary hearing essentially allows various individuals and groups to express their concerns relating to the hearings (Anthony and Lucas, 1985: 51-52). The commissioner of an inquiry may also conduct informal meetings with key participants and groups. These informal meetings may serve the function of educating the groups about the inquiry process, encouraging participation, collecting information and discussing participant funding (Anthony and Lucas, 1985: 44-48).

TYPES OF HEARINGS

The commissioner must decide on the form of the hearings for the inquiry. Although most statutory inquiries are similar to court procedures, commissioners can adopt their own procedures as long as they meet the minimum legal requirements and comply with relevant statutes (Anthony and Lucas, 1985: 63). Commissioners may utilize more than one type of hearing or have variations or combinations of hearings depending on the inquiry. There are four basic types of hearings that can be used in

public inquiries. The formal hearing refers to the traditional and structured type of hearing that is similar to judicial procedures. In a formal hearing, witnesses are examined and then cross examined by inquiry staff members and other participants. Substantive and procedural arguments can be made by individuals if they feel there is a problem. As stated by the courts or an inquiry statute, a formal hearing is required when an individual's rights are affected by the inquiry and the courts or statutes specify that a formal hearing is needed. Advantages to formal hearings are that participants know what to expect and evidence can be challenged. Disadvantages include the formal and technical nature of the hearings and the considerable resources that are needed (Anthony and Lucas, 1985: 64-65).

Community hearings are another type of hearing that can be used by commissioners in an inquiry. This type of hearing involves local participants presenting their information without being cross examined. The information presented at community hearings may include both technical expertise and opinions. The advantages of community hearings are that participants are less likely to feel intimidated and the costs are lower than for other forms of hearings. The disadvantages are that submissions in response to information are the only way to challenge information and that participants from another area with relevant information have to present this information at a different time (Anthony and Lucas, 1985: 65-66).

Seminar hearings involve the assembly of a panel of experts on a specific topic. Each expert on the panel is able to present their views, comment on other experts' opinions and question them. This type of hearing allows experts to discuss the evidence

together and address questions arising from discussion. The disadvantages are that the information discussed may only be understood by the panelists and the way the information is presented may have a greater impact than the quality of information (Anthony and Lucas, 1985: 66). The *Commission of Inquiry into Certain Events at The Prison for Women in Kingston* (1996), employed seminar hearings on policy as part of the inquiry process. Invited experts and other interested parties were able to discuss their perspectives on policy. The commissioner, The Honourable Louise Arbour, stated that she selected seminar hearings for this part of the inquiry since it was more appropriate than structured procedures and was also less expensive (Arbour, 1996: xiv).

Hearings may also take the form of a submission. Submissions involve the participant presenting information to the commissioner and the inquiry staff verbally and/or in writing depending on the specifications made by the commissioner. The advantages to submissions are that they are inexpensive, fast and less intimidating for the participants than other types of hearings. The disadvantages are that only the commissioner and the inquiry staff are permitted to ask questions and that the process does not occur in a public forum (Anthony and Lucas, 1985: 67; Wilson, 1982: 31).

In the *Commission of Inquiry on the Blood System in Canada* (1997), Justice Horace Krever implemented various types of hearings in the inquiry. The first type of hearing he employed was the formal hearing which was divided into three phases. The first phase of the formal hearings involved collecting the testimony from the victims or the victims' families infected with HIV or hepatitis C from contaminated blood. Various related community organizations such as AIDS related organizations were also permitted

to give their testimonies during this phase. The second phase involved collecting testimonies pertaining to the history of the blood system in Canada. The third phase involved hearing testimonies on the current blood system. In addition to the formal hearings, the inquiry accepted written submissions from various individuals and groups and a toll-free telephone number was also available to people who wanted to speak with the commissioner or a staff member directly. The various options available to commissioners allow them to select the type of hearing(s) which would be best suited for their inquiry (Krever, 1997).

PROCEDURAL RULES

An interpretation of the procedural rules is one of the first tasks of the commissioner. These rules must be developed within the guidelines in the terms of reference stated in the Order in Council, the relevant statutes and by the courts. Once the procedural rules are established, the commissioner should define the scope of the inquiry and outline a general time frame. Individuals and groups who want to be participants should be included and anyone whose rights may be affected by the inquiry should become a participant automatically (Anthony and Lucas, 1985: 69-74; Pross, Christie and Yogis, 1990: 141-146). For example, in the Krever (1997) Inquiry into the blood system in Canada, individuals whose rights might be affected by the inquiry include individuals who were infected with the human immuno-deficiency virus (HIV) and the hepatitis C virus through the blood system (Anthony and Lucas, 1985: 72-74; Krever, 1997).

The commissioner should state the rights and responsibilities of the participants

in the inquiry. The rights of the participants should include having an opportunity to participate and the right to information from the inquiry. Although a number of individuals and groups may participate in an inquiry, only a small number will participate in all aspects of the inquiry. These groups of participants are usually called major participants and they have special rights including being able to present evidence, to cross examine, to have access to documents and to participate in inquiry planning meetings (Anthony and Lucas, 1985: 69-78, 181-183; Pross, Christie and Yogis, 1990: 141-146).

The Inquiry Counsel

The inquiry counsel (also called the commissioner's counsel) may serve a number of purposes. Although the counsel works for the commission, the commissioner may direct the counsel to present witnesses as his or her own clients. In these cases, the inquiry counsel is unable to cross examine those witnesses. The counsel may be instructed to help the participants in preparation for the hearing. For example, the counsel may review with the participants what to include in their testimonies. The inquiry counsel may be responsible for presenting information in cases where the information cannot be presented by the individuals. For example, foreign government officials may not be permitted to testify at inquiries although they are able to provide the inquiry with valuable information. The counsel may also be required to issue subpoenas to reluctant witnesses (Anthony and Lucas, 1985: 78-81; Pross, Christie and Yogis, 1990: 77-83).

Subpoenas

A subpoena may be utilized by the inquiry to compel a witness to testify as

stated in the *Inquiries Act* and in all provincial legislation. This power stems from the statute or inquiry act which allowed for the creation of the inquiry. To obtain a subpoena, an application must be made to the court. After obtaining a subpoena from the court, a witness who fails to testify will be placed in contempt of court (Alberta Law Reform Institute, 1991: 38-39; Anthony and Lucas, 1985: 99-101; Ontario Law Reform Commission, 1992: 48-51; Pross, Christie and Yogis, 1990: 134-135; Wilson, 1982: 29).

Resource Documents

To establish a documentation base for an inquiry, various statutes pertaining to inquiries require participants to provide the inquiry with a comprehensive list of all relevant documents that they may discuss in their testimonies (Anthony and Lucas, 1985: 81-87). Section III (E) 32 of the Rules of Procedure and Practice states that the Commission may require that originals of relevant documents be provided. In addition to documents, some commissioners may require each witness to submit a statement of evidence before testifying at the hearing. The statement of evidence allows other participants to fully prepare for their cross examinations (Anthony and Lucas, 1985: 81-87).

Hearsay and Opinion

The admissibility of hearsay and opinion evidence is left to the discretion of the commissioner. If the commissioner is adhering to strict rules of evidence, only direct observations could be admitted and opinions could only be stated if they are from experts in a specific field. In most cases commissioners hear hearsay and opinion evidence since this demonstrates that they are listening to the public (Anthony and Lucas, 1985: 89-90).

Cross Examination

Cross examinations are utilized to challenge evidence presented by witnesses, but the decision to have them is at the discretion of the commissioner. If cross examination is allowed, all participants typically have the opportunity to cross examine any witness. In certain forms of hearings, such as community hearings, cross examinations are normally not permitted. When cross examinations are not permitted, the commissioner usually has a format for others to express their concerns. For example, the commissioner may accept written submissions from participants who have concerns about a witness's testimony (Anthony and Lucas, 1985: 91-96; Pross, Christie and Yogis, 1990: 82; Salter and Slaco, 1981: 187).

The Official Record

In most public inquiries, an official record documenting all submissions, transcripts and exhibits from witnesses is kept. The concept of an official record is that all recommendations are based on evidence contained in the official record. This record keeping procedure is taken from the court system (Anthony and Lucas, 1985: 97-99).

Submissions

Hearings that include submissions can involve individuals presenting their evidence to the commissioner and then the commissioner asking questions. Alternatively, the use of written submissions gives the inquiry time to review the material before the participant gives their testimony. When a participant who provided a written submission to the inquiry testifies, that person may be required to read the entire submission, summarize the submission or may not have to refer to the submission

depending on the decision made by the commissioner concerning the inquiry process (Anthony and Lucas, 1985: 87-89,107-110).

Procedures in Community Hearings

Community hearings are utilized as an informal method of collecting information from community members. Decisions involving timing and location of the hearings must be made based on a balance between the needs of the community and the inquiry. In this type of hearing, a list of participants who will give evidence is generated and each participant is granted time to present their information. Cross examination is not typically permitted (Anthony and Lucas, 1985: 110-116).

Procedures in Formal Hearings

Formal hearings normally require the commissioner to deliver an opening statement, introduce the staff, explain the transcribing process and describe the rules. The inquiry counsel may make an opening statement if he or she is playing a large role in the hearing process. Since the media are usually present at the beginning of the hearings, the commissioner may allow each participant to make an opening statement. After the opening comments, witnesses in a specified order may begin to be called. The witness may have to take an oath if it is required and then the individual is asked to state his or her qualifications. Evidence is then presented and clarifications are made if it is necessary. Then, the witness is typically cross examined by the participants, followed by inquiry counsel and then the commissioner. If necessary a re-examination of the witness involving additional questions being asked to the witness is permitted if a participant feels that clarifications need to be made based on the cross examination evidence. The

witness is then either discharged by the commissioner or the individual is not discharged but has completed the questioning and is permitted to leave. By not discharging the witness, the commissioner reserves the right to call that witness again. A witness may also be required to undertake to provide the inquiry with additional information. If necessary the witness may be cross examined on that additional evidence. Participants or the commissioner may request final submissions to be made by participants or inquiry staff at the discretion of the commissioner. Participants must be given sufficient time to develop a final submission which may be oral and/or written depending on the format requested by the commissioner. Typically written rebuttals are permitted by the commissioner if there are any further comments that the participants want to express to the commission (Anthony and Lucas, 1985: 116-132).

Rulings

Throughout the hearings the commissioner may be asked by a participant to make a formal ruling on a particular dispute or question. The particular dispute or question may pertain to a procedural issue or any other issue that a participant may want to raise. Although the commissioner may make rulings, it is often treated as a last resort. If a ruling is made and it is not followed, it is taken to court where the ruling can be made a court order. If the ruling is still not followed, the court can hold an individual in contempt of court (Anthony and Lucas, 1985: 126-129).

Closing an Inquiry

Typically the inquiry ends when the final report is submitted. In writing the report and developing the recommendations, the commissioner must determine the

weight that is to be given to each piece of evidence. The commissioner usually issues a main report which explains all the key information and presents recommendations and an executive summary which would be more accessible to the general public (Anthony and Lucas, 1985: 141-152).

Unless it is stated in the Order in Council, commissioners do not have printing and publishing rights of their reports. The Governor in Council through the government decides if the report or any studies will be made public. The government also has the authority to expurgate the report before it is published (Wilson, 1982: 10, 36, 39-41). Release of an inquiry report by the government may occur over a period of time where separate volumes are released at different times or the report may be released at one time (Wilson, 1982: 35). Recommendations made in the final report by the commission do not have to be accepted by the government (Wilson, 1982: 12).

The first and only time the Canadian government ordered the discontinuation of an independent inquiry was during the *Commission of Inquiry into the Deployment of Canadian Forces to Somalia* (1997). The scope of the inquiry included the investigation of the murder of Shidane Arone, a Somali who was brutally killed in a Canadian camp in Somalia and the alleged cover-up by both the military and the federal government. Before these two important elements of the inquiry could be fully examined, the government forced the termination of the inquiry. As a result of this act, people have begun to question the inquiry as an independent mechanism of government (Desbarats, 1997).

A COMMENT

While the absence of one set of uniform rules and regulations makes it difficult for commissioners to develop an inquiry, the existence of a wide variety of options matches the broad spectrum of issues that may become subjects of public inquiries. An inquiry commissioner has the discretion to select the technique or techniques that would best fit the particular inquiry. The decisions made by the commissioner are important in the development of the inquiry and the conclusions reached. Even very small details such as the location site of the hearings can have an impact on the entire inquiry if some groups disagree with the decision (Anthony and Lucas, 1985; Pross, Christie, and Yogis, 1990; Salter, and Slaco, 1981).