Defending a Contested Ideal

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Published by University of Ottawa Press

Juillet, Luc and Ken Rasmussen. 
Defending a Contested Ideal: Merit and the Public Service Commission, 1908–2008. 

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INTRODUCTION:

DEMOCRATIC GOVERNMENT, MERIT AND THE PUBLIC SERVICE COMMISSION OF CANADA

Democratic government in modern industrial society must be able to command ... the services of a well-trained bureaucracy of good standing and tradition, endowed with a strong sense of duty and a no less strong esprit de corps. Such a bureaucracy is the main answer to the argument about government by amateurs.... It must also be strong enough to guide and, if need be, instruct the politicians who head the ministries. In order to be able to do this it must be in a position to evolve principles of its own and be sufficiently independent to assert them. It must be a power in its own right.¹

Joseph Schumpeter. 1942

The creation of the Civil Service Commission (CSC) in September 1908 represents a milestone in the history of the public service and the development of democratic government in Canada.² The establishment of a commission independent from the government with exclusive statutory authority for appointing individuals to the public service, apart from the most senior executives, marked the birth of a non-partisan bureaucracy. By putting in place a system that would appoint and promote public servants on the basis of an independent assessment of their merit, the Government of Canada ended widespread political patronage and made possible the development of a professional public
service that would be better able to ensure the effective delivery of public services and advise the government of the day on policy decisions.

In addition to increasing the competence of the public service, the application of the merit principle gave public servants a measure of independence from their political masters. While it was recognized that public servants could never be completely insulated from political pressures, the independent system of appointment and promotion allowed them to remain politically impartial and offer candid advice to ministers guided solely by the public interest and without fear of repercussions on their career prospects. The merit system also gave public servants enough independence and security to resist unscrupulous politicians who might try to pressure them into circumventing laws or disregarding standards of conduct in order to further partisan aims.

In sum, in September 1908, the Canadian Parliament took a crucial step toward building a professional public service that could be used by the government as an effective instrument in the pursuit of the public interest, and it also planted the seed of a new national institution destined to become a power in its own right in the governance of Canada.

On the surface, the creation of a staffing agency and the adoption of rules for appointing civil servants hardly seem like crucial matters of state. But a decision to build a professional and impartial bureaucracy is of fundamental importance in the development of a modern democracy. As Professor Ezra Suleiman reminds us, democratic governments require legitimacy, which, in no small measure, is derived from their effectiveness in delivering important public goods and from citizens' ability to trust that they will be treated with fairness and impartiality by the state bureaucracy. Despite some of the potential dangers associated with professional bureaucracies, notably the lack of responsiveness to duly elected governments that can come from too much independence and from the asymmetry of information and expertise that necessarily exists between elected officials and bureaucrats, it remains a fact that the creation of an effective and impartial public service is an indispensable component of democratic government.

In the Anglo-American democracies, including Canada, the development of the professional public service was inextricably linked
to the adoption of a staffing system founded on the principle that appointments and promotions should be made only on the basis of an independent assessment of merit as determined through examinations. This merit principle finds its main source in a landmark report written for the British government in 1854: the Northcote-Trevelyan report. Authored by reformers Sir Stafford Northcote and Sir Charles Trevelyan, the report called for a new civil service to help meet the challenges faced by their country:

> It may safely be asserted that, as matters now stand, the Government of the country could not be carried on without the aid of an efficient body of permanent officers, occupying a position duly subordinate to that of the ministers who are directly responsible to the Crown and to Parliament, yet possessing sufficient independence, character, ability and experience to be able to advise, assist, and to some extent, influence those who are from time to time set over them.

The progressive establishment of a merit-based staffing system was the mechanism through which this “independence, character, ability and experience” would be assured.

The Northcote-Trevelyan report was pivotal in the development of the civil services of all the Anglo-American democracies, which were influenced by the report as they reformed their bureaucracies in the late 19th and early 20th centuries. Britain set up its first civil service agency in 1855 and progressively developed its merit-based staffing system over the subsequent decades. It was eventually emulated by the others. The United States started to implement a merit-based system with the adoption of the Pendleton Act in 1883. Australia and New Zealand followed suit with the adoption of a merit-based system in 1902 and 1912, respectively. With the creation of the Civil Service Commission in 1908, and the extension of its authority over the entire public service in 1918, Canada was clearly part of this broader wave of reforms. As we will see in our first chapter, the British experience played an important role in the choices made by Canada. Despite significant national variations, by the 1920s, all the Anglo-American democracies had adopted merit systems for staffing their bureaucracies.
However, despite its historical contribution to the development of professional public services in these democracies, the merit principle soon became the target of much criticism. In particular, the commissions established to make the principle of merit an operational reality progressively developed extensive and cumbersome sets of rules that stifled the efficient management of personnel. As the bureaucracies expanded, government became more complex, and societies began to expect faster and more adapted responses to a diverse set of social problems. The merit system came to be seen as excessively unwieldy and burdensome, a poster child for bureaucratic inefficiency. Like United States President Jimmy Carter, commenting on the arcane rules of the American merit system in 1976, many people came to believe that there was "no merit in the merit system." Moreover, in the post-war period, politicians increasingly felt that they lacked control over the policy-making process and they started demanding that their civil service be more responsive to their direction. As a consequence, many democracies witnessed renewed efforts to re-establish political control of the bureaucracy, including through the politicization of appointments. In some cases, public servants themselves came to see the convention of political neutrality of the public service as imposing unwarranted shackles on their legitimate right to fully participate in the political life of their communities. Furthermore, as advanced democracies embraced a fuller conception of democratic equality, concerns about discrimination and the underrepresentation of minorities in state bureaucracies posed additional challenges to the actual operation of merit-based staffing processes.

As a result of this confluence of criticisms, the operation of the merit systems of Anglo-American democracies, if not the principle of merit itself, has changed considerably over the years. In fact, many countries have abolished their independent commissions and modified their staffing systems in the hope of responding to the pressures for greater managerial efficiency and political responsiveness. Canada has not been immune from these pressures. While the Public Service Commission (PSC) continues to play an important role as an independent staffing agency, it has undergone considerable changes over its hundred years of
history. Like the personnel management system of the Canadian public service as a whole, it has had to adapt to its changing environment. But how should we characterize the Public Service Commission's evolution over the last century? How can we explain its resilience and longevity despite the growing criticism of the merit system over the years? What were the main trends and pressures that affected the commission and the merit system over time? How did the commission itself seek to respond to its changing environment? What do these changes tell us about the evolution of Canadian public administration over this period? This book seeks to address these questions.

**Merit as a Balance of Values and the Value of Institutional Ambivalence**

In order to better understand the unique role and origins of the Public Service Commission, its evolution, and the challenges that it has faced, this book provides a brief history of its first hundred years of operation. In recounting this history, we make two broad claims. The first is that the history of the commission can be understood as an evolving struggle to achieve a balance among three competing, and at times contradictory, sets of values at the heart of public service staffing in a liberal democracy: political neutrality and independence; fairness and democratic equality; and competence and managerial efficiency. The second is that the commission's unique institutional position, both as a central personnel agency with authority over staffing and an independent body reporting directly to Parliament on the state of the merit system, has contributed significantly to its longevity and to its ability to ensure a balance among the key values underpinning the staffing system.

Because these values are complex, multi-faceted and ever-evolving, periodic adjustments to the staffing system have been required. A look at the history of the Public Service Commission reveals how a large part of its efforts have been spent trying to make sense of the meaning of these values, adjusting to endogenous and exogenous shocks or pressures that have affected their relative weight or changed their meaning, and searching for a set of rules—the infamous merit system—that could be
used to live up to them. In other words, while it is undeniable that the
creation and evolution of the PSC has been inextricably linked to the
ideal of merit, the exact meaning and practical implications of this ideal
have often been ill defined and the object of much controversy. From
the outset, the merit system has been contested, and it has attempted to
strike an uneasy balance among the competing values that it was meant
to embody.

What degree of political rights for public servants should
non-partisanship tolerate? At what point does the independence
of the bureaucracy, meant in part to ensure professionalism and
efficiency, become an obstacle to the effective implementation of the
democratic will as legitimately articulated by the elected government?
Should fairness and equitable access mean preferential treatment for
underrepresented groups? To what extent is preferential treatment
compatible with ensuring that the “most qualified” person is hired?
At what point does a rigid and cumbersome system meant to ensure
the hiring of the best qualified person without political consideration
turn in fact into a drag on organizational efficiency and become a
straightjacket for managers, hindering the efficient delivery of public
services? Conversely, at what point does managerial flexibility in staffing
generate discretionary decisions that are incompatible with fairness
and endanger the competence of the public service? These types of
questions, concerning either the meaning of the three sets of values
previously listed or the appropriate balance among them, permeate the
history of the commission. And, of course, they have few clear and
consensual answers. As the history of the PSC shows, finding answers
to these questions is a never-ending struggle.

The task is all the more difficult because it involves shooting at a
moving target. Over the course of the last century, Canadian society has
changed considerably. For example, the growing emphasis on rights and
the rise of identity politics since the 1960s have given unprecedented
prominence to issues of employment equity and altered old conceptions
of fairness. These social changes are not unrelated to the PSC’s renewed
venture into the areas of bilingualism and employment equity in the
1960s and 1970s. But responding to these social and political trends has
necessitated some adjustments to the commission’s operations and to its
operational conception of the merit principle. One only has to read the speeches of John J. Carson, PSC president in the 1970s, to measure the difficulties involved in rethinking the traditional meaning of merit in the new social context. A similar story can be told about the changing expectations of public servants with regard to their political rights in the 1980s and 1990s. However, probably the most significant trend to have affected the PSC over the years has been the growing attention paid to efficiency and managerial flexibility. Since the end of the Second World War, demands for more managerial flexibility and greater efficiency in public management have been unrelenting. Over this period, the PSC has worked to meet these demands while continuing to protect the other values that have been integral to its raison-d'être since its inception.

In sum, over the years, more than a simple search for the "best qualified," merit has been an uneasy proxy for different sets of values and aspirations that are themselves not easy to either define or reconcile. As noted scholar Patricia Ingraham puts it, "Merit is related to values, ideals, and ethics, to the appropriate role of the civil service in a democracy and thus to governance in a democratic society." For this reason, at some level, debates about the merit system are not merely technical and administrative in nature. They are also debates about which fundamental values a public service should espouse in a democracy and about how to design a system that can reasonably uphold competing values. In our view, this complex reality involves a difficult balancing act, which inevitably leads to evolving, and never fully satisfactory, compromises. It explains in good part the difficulty experienced in trying to "fix" the merit system over the years. It explains why the PSC, while actively embracing the need for reform at several points throughout its history, has also often been the voice of caution that sought to temper the zeal of reform advocates more single-mindedly focused on only one dimension of the staffing system. It also helps us understand why, at some stages of its history, the commission has heavily invested itself in activities such as language training, which may have appeared somewhat removed from a more narrow conception of merit-based recruitment, but which were related to the promotion of important values for the Canadian public service.
The commission's longevity and continued influence can also be explained by another of its features: its unique institutional ambivalence. As we will see in Chapter 1, the creation of the Civil Service Commission in 1908 involved an unusual institutional choice. On the one hand, the commission is a central personnel agency, exercising exclusive statutory authority for appointing individuals to the public service, but it is independent from Cabinet and it does not take directions from a minister. On the other hand, it is an agent of Parliament, expected to account directly to Parliament for the use of its executive authority and responsible for the oversight required to guarantee the integrity of the merit system, but it is not represented in the House of Commons by a minister and, historically, it has had only a tenuous relationship with Parliament. In other words, it has a foot on each side of the executive-legislative divide.

The creation of an organization with such characteristics took some creativity and abnegation, especially in the context of the early 20th century. In order to foster the development of a public service characterized by professionalism and a reasonable degree of independence, legislators needed to accept that the commission itself would have an unusual degree of independence and break with the traditional doctrine of ministerial responsibility. It would also mean giving up any involvement in the distribution of patronage. As two of Canada's pre-eminent political scientists noted, selecting who should be appointed to the public service was so important that it required a "self-denying gesture for all MPs, a sort of institutionalized conscience to act on their behalf so that they could no longer be led into patronage temptations." Equally important was the willingness of the Crown to abandon its control over appointments and agree to transfer this authority to an independent agency out of its reach.

This rather remarkable "gesture of self-denial" has had a long-lasting impact on the PSC and its ability to protect the principle of merit. At times, the PSC has exercised leadership within the administrative arm of the executive; at other times, it has played up its privileged relationship to Parliament, asserting its independence and its unique role as a guardian of the merit system. Over the years, parliamentarians,
ministers, and public servants have often found this combination of roles to be uneasy, even problematic. Several reform proposals have attempted to do away with this duality, often by transferring the PSC’s executive authority to a traditional central agency while transforming it into a pure parliamentary oversight body. But by using the two facets of its institutional personality, by making the most of its ambivalent institutional position, the PSC has been better able to strive for a balance among the competing demands placed on the staffing system. It has been able to remain in closer contact with senior executives and departmental managers as a direct participant in staffing and other personnel management functions, but it has also been able to step back, use its independence to resist political pressures on behalf of departments and sometimes block reforms that might have undermined some of the core values of the public service.

Certainly, living with this ambivalence has not always been easy. Over the years, the PSC has been accused of being both too compliant and insufficiently co-operative. But despite the criticism, this unique position has often served it well. Moreover, with the independence of the PSC inscribed in statute in the name of protecting the ideals of independence and merit, the executive would have difficulty taking it back. Even in an age when many observers worry about the lack of the public service’s responsiveness to its political masters, a politician asking Parliament to do away with the commission’s independence in the field of staffing would run the risk of being accused of wanting to return to the good old days of political patronage. From this perspective, its institutional ambivalence has undoubtedly contributed to its longevity.

**Outline of the Book**

In order to fully capture its evolution and the debates that have shaped it, this book examines the entire history of the Public Service Commission, from its inception at the turn of the 20th century to the reforms of recent years. The focus of our analysis is not so much the detailed organizational changes that have marked the evolution of the PSC as the broad transformations that have affected its role.
over the years and the debates that have dealt with its raison-d'être. Consequently, our treatment of the history of the PSC gives prime of place to its institutional position in Canada's constitutional order, to its role in promoting some of the fundamental principles underlying Canada's public administration and to its importance for democratic government in Canada. At the same time, given the PSC's inextricable link to the merit principle, we also examine how the understanding of this principle has evolved over time and how the merit system has tried to live up to a changing set of values and objectives over the last century. While the key trends and events that have shaped the commission are described, we endeavour to discuss their significance in the broader context of the evolving nature of Canadian government and public administration.

Chapter 1 re traces the debate concerning the need for an independent Civil Service Commission as a key step in overcoming patronage in the late 19th century and early 20th century. At its heart, the creation of the commission served one primary goal: eliminating patronage by establishing a system of competitive examination for recruitment and promotion on the basis of merit. But, as this chapter demonstrates, a wide range of arguments were raised at the time and, from the outset, the purpose of the merit principle and the need for an independent commission were contested. The need to rid the public service of patronage was associated in large part with the requirement for more professionalism and competency in the management of public affairs. Less political control over staffing would result in a more effective public service, it was argued. In this sense, while it would come to be associated with many criticisms of the commission, efficiency was one of the reasons that the commission was established in the first place. But professionalism and efficiency were not the only objectives. The democratic necessity for more equitable access to public employment, regardless of one's relationship with the governing party, was also a prevalent argument.

However, standing in the way of these goals was a powerful constitutional argument in favour of retaining the Crown's prerogative to make appointments to the public service. Despite the ills associated
with it, patronage remained for many politicians and public servants a legitimate use of the Crown's authority, and to place staffing in the hands of an independent commission with a tenuous relationship to Parliament would constitute a serious violation of the fundamental principle of ministerial responsibility. In this period, despite the growing influence of reformers and the precedents set by Britain and the United States, the emerging convention of a non-partisan public service, staffed by an independent commission, remained contested among the governing elite.

Chapter 2 examines the challenges faced by the Civil Service Commission from 1918 to the end of the Second World War. Soon after it gained full authority to staff the entire public service in 1918, the commission came to occupy a central place in the Canadian personnel management regime. Whatever limited ambitions may have existed at the time of its creation in 1908, it was quick to establish itself as an important institution in the creation of the modern professional public service, taking on responsibilities not only for recruitment but also for classification, pay determination, organizational development, training and development, and appeals. Moreover, in this same period, the commission began to struggle with the need to balance competing values and demands with regard to staffing the public service. The appealing idea that competitive examination would be the sole means of determining merit soon had to be tempered by the need to take into account other social and political considerations. Throughout this period, the merit system was adapted in order to favour veterans who were seeking public employment, prevent women from obtaining certain positions and entering certain classes of employment and secure better regional and linguistic representation. Furthermore, as it continued to fend off criticism for usurping the power of the Crown and being insufficiently accountable, the commission also had to contend with the disagreement of staff associations and senior management about the best way to put in place a classification system that would underpin the country's merit-based career public service.

Chapter 3 examines the period from the end of the Second World War to the major legislative reforms of 1967. Arguably,
this could have been the commission's heyday at the centre of the personnel management system in Ottawa. Having accumulated more responsibilities in the preceding decades, it was now playing the central operational role in staffing and personnel management and, until the end of the 1950s, it even continued to acquire new functions related to training, research and appeals. But, over this period, a growing preoccupation with modern management also led to the emergence of one particularly stinging criticism of the commission: that it constituted a barrier to efficient public management. In particular, three high profile commissions that examined the public service—the Gordon Commission (1946), the Heeney Commission (1959) and the Glassco Commission (1962)—released reports that challenged the authority of the Civil Service Commission in personnel administration. For these commissions, as the public service was becoming a much larger and more complex organization, it needed to embrace more modern approaches to management in order to remain efficient. Excessive central controls over departmental managers and the awkward division of responsibilities for management between the Treasury Board and the Civil Service Commission at the centre were increasingly seen as impediments to good administration. So while this period saw some minor changes to personnel management in the public service, most notably with the adoption of the Civil Service Act of 1961, its more significant legacy was that it marked the beginning of what became a strong and lasting criticism of the commission and the merit system in the name of managerial flexibility and efficiency.

Chapter 4 looks at the period from 1967 to 1979, which witnessed the most extensive reforms to the Civil Service Commission (CSC) and personnel management since the beginning of the century. The Public Service Employment Act, adopted in 1967, transformed the CSC into a new Public Service Commission (PSC), which lost its responsibilities over matters of pay and classification to the new Treasury Board Secretariat (TBS), formally designated as the 'employer' of public servants. In response to the Glassco Commission's report, the PSC began to extensively delegate its staffing authority to the deputy heads of departments. Despite having to exercise this authority within the
policy framework set by the PSC, departmental managers were to gain an unprecedented degree of freedom in personnel management.

However, as this chapter clearly shows, this crucial period in the history of the PSC did not simply result in a curtailment of its responsibilities and authority in favour of the TBS and departmental managers. In fact, the reforms implemented in the pursuit of greater efficiency were sufficiently limited that, by 1979, the Lambert Commission and the D'Avignon Committee were calling for additional changes to ensure better personnel management. Over this period, the PSC also developed new services and policies in response to the rising importance of the concepts of equality and freedom in Canadian society. Taking a leadership role in building a representative public service, it developed programs to improve the bilingualism of public servants and recruit more employees from underrepresented groups, such as women, aboriginal peoples and members of visible minorities. Moreover, the PSC had to respond to changing conceptions of political neutrality and public servants' right to political participation, anticipating further changes that would occur in the following decades. In sum, while the growing importance of managerial flexibility and efficiency led to significant changes over this period, the PSC continued to play a key role in staffing and personnel management and it remained actively committed to a broader set of values, including non-partisanship and equity.

While the growing pressures to redefine the meaning of the political neutrality of public servants were evident in the 1970s, the issue took on greater importance in the following decades. Chapter 5 examines how the PSC struggled to defend the traditional values of neutrality and non-partisanship in the face of changing political and social expectations in the period from 1979 to 2006. As this chapter shows, the debate took two forms. First, two important court decisions forced the commission to rethink the traditional limitations placed on the participation of civil servants in the political process, eventually leading to new legal provisions that were inscribed in the new Public Service Employment Act in 2003. Second, following the arrival in power of the Progressive Conservative government in 1984, new concerns
were raised about the bureaucracy’s insufficient responsiveness to the new government’s direction. The creation of larger and more powerful ministerial offices, staffed directly by the government outside the merit system, was one of the means used to re-establish political control over the bureaucracy. However, this novel development gave rise to some concern about the integrity of the merit system, especially since ministerial staff were able to gain priority rights of appointment to the public service. This pathway into the public service was eventually closed by the Conservative government of Stephen Harper in 2006.

This chapter clearly illustrates how the commission has had to adapt to a changing social and political environment and how the meaning of even fundamental values such as non-partisanship and political neutrality has evolved over the years.

Chapter 6 looks at the reforms that took place in the period from 1984 to 1993, the years of the Progressive Conservative government led by Brian Mulroney. With a rhetoric hostile to the bureaucracy and an agenda of deficit elimination, the Mulroney government, arriving in office, sent a clear signal to the public service that administrative reforms would soon ensue. Given the government’s sympathy for the New Public Management movement and its belief in the superiority of private sector management practices, it is not surprising that the staffing system would again be criticized for its excessive rules and undue constraints on managers. Efficiency, once again, became the order of the day. In this context, the Public Service Commission turned out to be a cautious but dedicated reformer. As this chapter demonstrates, the PSC itself pursued an agenda of administrative and legislative reforms meant to facilitate staffing for departments. Then, when the government launched its own administrative reform process known as Public Service 2000, the PSC worked actively to make more structural improvements, not only defending the government’s legislative proposals but also proposing some of the new flexibilities that were ultimately included in the Public Service Reform Act of 1992. However, as this chapter also shows, while the commission embraced the need for more managerial flexibility and efficiency, it remained careful to seek a balance between this objective and other traditional objectives of the merit system, such
as non-partisanship and equity. Integral to this balance, the commission believed, was its own independent authority over staffing. For this reason, while the Mulroney years saw the commission embrace the need for reform, they also saw the commission successfully defend itself against another attempt to curtail its direct and independent authority over staffing.

Finally, Chapter 7 examines the period from 1993 to the present. Over this period, the human resources management framework of the public service, including the PSC, underwent its most profound transformation since the reforms of 1967. Throughout the 1990s, as the Canadian public service continued its transformation, seeking to become leaner, more strategic, more results oriented and more flexible, the PSC itself began to re-examine its raison-d’être. As the public service was trying to move away from the traditional forms of bureaucratic organization, the PSC increasingly felt the need to focus on its core mandate: the guardianship of some of the foundational values of a professional public service. It progressively modernized its approach to delegation, placing more emphasis on accountability for results and respect for key values, and it came close to withdrawing almost completely from service delivery in order to better focus on staffing oversight.

But, ultimately, it was the adoption of the Public Service Modernization Act, which included a new Public Service Employment Act, in 2003 that significantly transformed both the PSC and the merit system. The law enacted a new definition of merit that was clearly meant to deliver the kind of staffing flexibility that managers and reformers had demanded over the years. Moreover, under the new framework, the commission retained its authority over staffing and even saw its independence reaffirmed, but it also divested itself of a large part of its human resources services in favour of a clearer focus on the oversight of departmental staffing. In effect, as it approached its centenary, the PSC repositioned itself to better focus on fulfilling its essential mandate—ensuring merit-based appointments—at a time when the meaning of merit was being radically changed.
Over the last century, the Public Service Commission has been much more than a simple staffing agency recruiting competent employees for careers in the public service. Its direct involvement in the various facets of human resources management has waxed and waned over time, but it has always remained a significant force in the development and preservation of a professional public administration in Canada. More importantly, the PSC has occupied a unique position in our national institutions, using its dual status as an independent agent of Parliament and a central personnel agency within the executive branch to defend the ideal of an efficient, representative, non-partisan and responsive public service that is able to serve the government of the day with a required measure of independence. As the following story will make clear, defending this ideal has not always been easy and the PSC has certainly faced much criticism. Over the years, the merit system—an often cumbersome set of rules meant to achieve an uneasy mix of competing values—and the PSC itself have had to be significantly transformed in response to the changing environment. But, throughout this never-ending search for a proper balance among efficiency, equity and non-partisanship, the Public Service Commission has played an invaluable role in the development of a national public service that continues to serve as an important cornerstone of democratic government in Canada.

ENDNOTES

1 Joseph A. Schumpeter (1942), Capitalism, Socialism and Democracy, New York, Harper and Row, 293.

2 The name of the Civil Service Commission was changed to the Public Service Commission in 1967. In this book, we will use Civil Service Commission (CSC) when discussing the period from 1908 to 1967 and Public Service Commission (PSC) when discussing the post-1967 period or when referring to the commission generally across historical periods.


