



Time to reform freedom-of-information laws

By Stanley Tromp, *Victoria Times Colonist*, January 21, 2018

The 1992 B.C. *Freedom of Information and Protection of Privacy Act* grants citizens the legal right to view government records. Yet this province's law has fallen far behind the rest of the FOI world, and advocates since then have urged desperately needed reforms, all to no avail.

Their hopes were boosted in the last B.C. election campaign, when the NDP, in a questionnaire to the B.C. Freedom of Information and Privacy Association on April 27, pledged to solve the three biggest problems.

First, Section 13 of the *Act* allows officials to seal records of policy advice. The trouble is that public bodies are applying the section too widely, to include all "facts and analysis" that were used to create that advice. This new black hole enabled a ministry to withhold 100 pages of factual records on the health impacts of liquefied natural gas, and the Provincial Health Services Authority to keep secret its internal audits. Even the former NDP attorney general pleaded for Section 13 revisions.

Second, the *Act* should be extended to the growing number of wholly owned subsidiaries of universities and Crown corporations, which perform public functions and spend billions of dollars of your money, and yet are excluded from FOI laws.

One could recall the vast losses through the government's fast-ferry subsidiary in the 1990s. Providence Health and the First Nations Health Authority need coverage also.

Third, we need a legal duty to document decisions, so that never again can officials stop recording minutes of their meetings after being annoyed by FOI requests for them (as did the 2010 Olympic Games Secretariat).

As well, one problem that should be easily fixed within a day — without law reform — is suspending the pernicious and widely condemned B.C. Liberal-era open-request website, whose main real purpose is to intimidate FOI applicants from filing requests. The NDP pledged to scrap it eight months ago, but did not.

We have heard such promises before, in former premier Gordon Campbell's victory speech in 2001: "We will bring in the most open and accountable government in Canada!" Former premier Christy Clark echoed the same vow in 2011. Both pledges were followed by the opposite result.

It seemed as if the government of Premier John Horgan wished to break that old pattern. Yet the clock is ticking, for it usually happens that incoming politicians' enthusiasm for FOI sags within a year, dampened by officials who will always oppose it, mainly because they fear a loss of control.

The bureaucrats' briefing notes last April to the incoming minister state on FOI: "Further review and consultation is required." The authors must be well aware that public bodies already have had 20 years of opportunities to consult through four legislative reviews.

Worse, there is no deadline set, which encourages this needless new activity to expand ad infinitum.

As matters are going, it seems possible that in 2038 we might be pleading for the same reforms, with the outstanding recommendations — some dating from 1998 — raised again by our grandchildren.

Officials still recite the vacuous scripted mantra that "these are very complex questions, which need more consultation, due to the risk of unintended consequences." Incorrect. The needed reforms are simple, they have been studied to death and other nations have not been harmed by passing them.

In the throne speech of Feb. 13, the NDP should fulfil its written pledges of last April, as well as implement the recommendations of the 2016 report of the FOI legislative review. One columnist called B.C.'s record on FOI "the shame of the province." Let us now change it into a cause for pride.

In sum, the opponents of reform depend upon the public's unawareness and indifference to the FOI dilemma, and one need not oblige them. If you want to exercise your basic democratic rights, and gain access to records on health, safety, misspending and environmental harms — all records produced at taxpayers' expense and supposedly for your benefit — then you can call Horgan and your MLA. Now is your best chance to make it happen.

Stanley Tromp of Vancouver is a longtime independent news reporter and author of a book on freedom-of-information laws.

[Factual and policy advice briefing note of 2004, released in full. If requested by FOI today, this record likely would have been mostly withheld under Section 13. – S.T.]

ADVICE TO MINISTER	
<p style="text-align: center;">CONFIDENTIAL ISSUES NOTE</p> <p>Ministry: Advanced Education Date: February 24, 2004 Minister Responsible: Hon. Shirley Bond</p>	<h2 style="margin: 0;">UBC Research Ethics</h2>
<p>KEY FACTS REGARDING THE ISSUE:</p> <ul style="list-style-type: none"> ▪ Margaret Munroe, a research reporter at the Can West News, conducted a study on medical clinical trials at Canadian universities, with a focus on uncovering conflict of interest activity between drug companies and university researchers. (Munroe's research for the study was funded through a Michener Fellowship.) During her research, Munroe interviewed a number of people at UBC on issues involving research ethics. ▪ The Vancouver Province, National Post and Edmonton Journal are featuring research ethics issues in their "Drugs, Money and Ethics" series that was written by Margaret Munroe. The papers are advertising that the February 25, 2004 article will be "<i>University of British Columbia broke rules for years, failing to warn patients of dangers</i>". ▪ UBC is the only university with a medical school so this issue is unlikely to come up with respect to other BC universities. ▪ Guidelines and/or standards for research involving human subjects are set by Canada's Tri-Council, a consortium of three research councils covering most federal granting agencies. A formal review initiated by UBC's VP Research in 2001 found that UBC was only partially compliant in meeting ethical standards because its Clinical Research Ethics Board only reviewed summaries of research protocols for clinical trials rather than the full protocols as outlined in the Tri-Council standards. The review also recommended that more administrative support be provided and that the membership of the board be expanded to broaden its expertise. Health Canada was alerted to the situation. ▪ As a result of the review, 399 clinical trials were audited. While no trials were shut down, concerns about patient consent required amendments to 37 consent forms and in two cases, patients needed to consent again. In addition, two studies were found non-compliant with regard to DNA/tissue testing, resulting in a request for re-consent or tissue destruction. ▪ UBC put remedial steps in place to comply more fully with the standards and reported them to the Tri-Council and Health Canada, both of which were satisfied with UBC's actions. In addition, the National Council on Ethics in Human Research followed up on the review in 2003 and found the university fully compliant. ▪ Another research issue that may be raised by Ms. Munroe is the multi-centre trial on Fluid Conservative vs. Fluid Liberal Management of Acute Lung Injury (FACCT). It is one of a series of trials run by the Acute Respiratory Disease Network, which is sponsored by the National Heart Lung and Blood Institute of the US National Institutes of Health. ▪ The trial began in 1999 and involves 30 well known US sites and one in Canada at UBC, to investigate two ways of managing in-patients with acute breathing problems often associated with trauma conditions such as car accidents. As this is not a drug or medical device trial, Health Canada approval was not required. Trials were conducted on 13 patients at VGH and 3 patients at St. Paul's. ▪ The trial was halted in both the US and Canada by the US Office of Human Research Protection amid concerns that patients were being exposed to unnecessary risks. While the investigation into the trial revealed that the trial was ethically appropriate and that patients were not being exposed to unnecessary risks, it was found that none of the sites had received adequate information from the Acute Respiratory Disease Network to properly assess risks and potential benefits. Therefore, all sites were required to modify their informed-consent forms, particularly with regard to the 	

descriptions of the trial's purpose and risks, which included death. UBC complied with the request that went to all sites modify their consent forms and the trial was permitted to continue.

ADVICE AND RECOMMENDED RESPONSE:

As a major Canadian research facility UBC adheres to all established guidelines and practices in ethical research.

On the Clinical Research Ethics Board issue:

- **In May 2001 UBC initiated an external review of its ethics procedures and I understand that it took all necessary steps to rectify non-compliant procedures to the satisfaction of both Health Canada and the Tri Counsel's ethical research standards.**
- **UBC also amended its ethical research policy to ensure future compliance.**

On the multi-centre FACCT trial:

- **This trial was sponsored by a an American grant and UBC was the only Canadian site of the 31 research centres involved**
- **UBC acted appropriately with the information that was provided to them at the time the trial was undertaken and acted quickly to comply with subsequent requirements once the shortcomings of information provided by the trials sponsor was known.**

STRATEGIC LINKAGES:

- Top-notch education
- Becoming a magnet for research and development

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Drug companies pay doctors big bucks for volunteers

Margaret Munroe

Tuesday, February 24, 2004

[Factual and policy advice briefing note to the same Ministry of 2011. – S.T]

Scan of Private Degree Granting in British Columbia

DRAFT

Background

In 2003, BC public universities and former university-colleges were the only institutions authorized to grant degrees. There was no mechanism for Canadian private post-secondary institutions to grant degrees unless they were established under a private act of the legislature. Post-secondary institutions based outside of Canada could operate a branch campus in BC and grant degrees if they were registered with the Private Post-secondary Education Commission (PPSEC).

Admissions standards (GPA) for entrance to university undergraduate degree programs were very competitive and student demand far outweighed the number of spaces available. **s.13**

In November 2003, the *Degree Authorization Act (DAA)* was brought into force and offered an avenue for private and out-of-province public institutions to apply for ministerial consent to offer, advertise and grant degrees and use the word "university" in BC. Degree granting institutions registered under PPSEC were required to obtain consent under the DAA if they wished to continue to operate in BC. **s.13**

Also in 2003, amendments were made to the *Colleges and Institutes Act (CIA)* to expand degree granting authority to BC public colleges and institutes, thus increasing the number of degree program offerings in BC. This allowed BC public colleges to offer applied baccalaureate degree programs and public provincial institutes and former university-colleges to offer baccalaureate degree programs and applied master's degree programs. In 2004/2005, Government announced plans to add 25,000 new full-time student spaces over six years to BC's public post-secondary institutions.

System Challenges

Over the past several years, the BC economy has improved and the number of students pursuing post-secondary education has decreased. **s.13**

Several countries posted warnings for students wanting to pursue education at private institutions in BC. The list that China references when determining whether a degree would qualify for recognition in China excludes most private post-secondary institutions, even those that have authority to operate in BC under the DAA. **s.13**

In 2008, the Off-Campus Work Permit Program was expanded on a pilot basis to include approved programs at privately funded institutions with consent under the DAA.

Scan of Private Degree Granting in British Columbia

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Student Enrolment **s.13**

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