Appendices

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APPENDIX 1

Citizens' Usage of the B.C. *FOIPP Act*

¶ Beyond the FOI usage by opposition parties or the news media – who serve the public interest in their own way – we need to focus now on the average B.C. citizens, who can least afford the request application fees permitted in Bill 22 (passed in November) and would be most harmed, the innocent parties caught in the political crossfire.

The government assures us that no application fees will be charged for personal requests, just for non-personal "general" ones; one problem we have is that the NDP implies that because most of the public do not file general requests, the public interest would not be harmed by possible prohibitive fees. This assumption is simply wrong.

Premier John Horgan claimed that "there will be no fee for individuals looking for information." Vaughn Palmer responded: "Not so. The only exemption announced to date is for individuals requesting information about themselves. Individuals seeking non-personal information — from government ministries, health regions, universities, school districts, crown corporations — would be subject to an application fee." (It is now set at $10.)

B.C. information and privacy commissioner Michael McEvoy told the *Vancouver Sun* about the fee: "It poses an obstacle to access and accountability, and not just for media," he said. "It could be a parent group, for example, that finds itself making access to information requests to multiple health authorities and to the Ministry of Health and other ministries. You could see how that number could add up awfully quickly and be a deterrent to people making legitimate requests."

CBC Alberta journalist Charles Rusnell wrote that his province's FOI application fee has always posed a financial barrier in Alberta. "This is particularly true for independent researchers affiliated with environmental groups and other non-profits, mall and even large media outlets and private citizens most of all."[1]

Ken Rubin, Canada's most expert FOI applicant and researcher for news media, noted: "From my experience, higher initial fees do act as a barrier: it turns people off who would apply (like citizen groups, people seeking to discover government effects on their health, income, environment, consumer products, etc.). Back in 1982-83, the feds began with a $5 application fee but draft regulations that I found said it would be $10. The publicity on this changed the application fee back to $5. I have often wondered if the fee was $10 (or up to the possible legal limit of $25 – still a possibility), what would have been the effect on usage."

David Cuillier, PhD, president of the U.S. National Freedom of Information Coalition, said on Bill 22 that such a fee puts many citizens at a disadvantage in interacting with their government. "Even worse, it differentially hurts the poor, widening the information gap in our society…. The

[1] Charles Rusnell, David Cuillier, Ken Rubin, correspondence with the author, Oct. 2021

public records request system is a way for citizens to interact with their government, and simply should be considered a cost of doing business. So why start making it harder for citizens to know what their government is up to on this front?"

We too often forget the public paid for the production of these records, millions of them, and so they are for that reason as much the public's property as are roads, schools, and bridges. The public hence should not have to pay for their production twice, through new FOI fees.

In 2019 I produced an Excel database of 2,000 B.C. news stories produced by FOI requests since 1993, to demonstrate the public value of the access law to skeptics. See: See the Index at - **https://canadafoi.ca/bcstoryindex.xlsx** There are 70 stories in Category 6 concerning records obtained by citizens. Because these stories are based only on records that the citizens chose to share with the media, there are likely many other examples that we never hear about.

Most importantly, some of these citizens (who may be too poor to pay fees) filed general requests for their whole community's benefit, above and beyond their own personal interests. The public had never been truly consulted about such planned fees in Bill 22. One might inquire of the Premier and cabinet members: is there any information in the stories below - if the FOI requests that revealed it had been blocked by application fees - that your constituents would be better off not knowing about?

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30 samples of the fine usages of "general information" B.C. FOI requests by average citizens, aiding a larger community purpose

(Portions highlighting the citizens' applications I have placed in italics)

[1]

***School's seismic safety rattles parents.* By Jeff Rud, *Victoria Times Colonist,* April 8, 2003**

Nobody knows for sure just how 109-year-old South Park elementary would fare if Greater Victoria experienced a major earthquake. But two engineering reports 12 years apart raising concerns about the safety of the popular James Bay school were enough for Alexander Galitzine to pull his two daughters from the school. The 2002 report results were *obtained by the South Park parent advisory council safety committee through the Freedom of Information Act*. It showed indications of a collapse hazard in even a moderate quake "with the probable complete loss of South Park elementary school." The Galitzines are one of four South Park families who had their children leave the school.

[2]

***Removal of hospital beds opposed by own experts.* By Don Harrison, *The Province* (Vancouver), Jan. 18, 2004**

The Fraser Health Authority removed all but a handful of acute-care beds from Delta Hospital despite being warned by its own experts about such a move. FHA documents show the two medical committees it set up to look into the controversial downgrading of Delta Hospital to a sub-acute facility advised last February that it would either be difficult or impossible to find room as planned for Delta patients at already-crowded Richmond and Surrey hospitals. The waits for beds could potentially put acutely ill patients at risk. This revelation comes after *the people of Delta filed a FOI request* to examine their health authority's plans. The 14 months' worth of documents are as thick as a phone book, but according to Delta's mayor, fail to answer the big questions.

[3]

***Losing track; Schools not taking ownership when struggling students leave traditional system early.* By Janet Steffenhagen, *Vancouver Sun*. Apr. 5, 2010**

A woman who was duped by a now-defunct company on contract with the College of the Rockies to recruit and help train nursing students has won a $25,000 judgment in small claims court after a two-year battle with the public institution. The college, located in southeast B.C., has also settled out of court with two other students who said they were cheated by the company, PTI Online, between 2002 and 2007. The college cut ties with the company in October 2007 after discovering it had falsified documents for students seeking entry to the college's access to practical nursing program. *Unable to afford a lawyer, students used FOI to gather evidence and took their case to "the poor people's court,"* said a friend.

[4]

***Woman launches class action suit after eardrum surgery.* By Pamela Fayerman, *Vancouver Sun*, Apr. 25, 2006**

A Vancouver woman who was shocked to learn she may have received infected donor tissue during reconstructive eardrum surgery in 1994 has launched what she hopes will be a class-action lawsuit against St. Paul's Hospital, the B.C. Ear Bank and a number of other defendants. *Her lawyer David Klein, who is asking the court to certify the case as a class action, said 70 pages of documents he obtained from the provincial government through FOI processes*, showed that when Health Canada conducted a review of the facility in late 2002, there were numerous health and safety concerns about the way materials like bones, membranes, and cartilage were being collected, stored and distributed.

[5]

***Lyme disease recognized*. By Barb Brouwer, *Salmon Arm Observer,* Aug. 6, 2013**

Sheri and Rory Mahood know well the hell that can follow a tick bite. Both are suffering the debilitating effects of Lyme disease from tick bites they received on their own Sunnybrae property in the fall of 2009. *The couple has formed the Lyme Disease Association of B.C. Through a FOI request, the Mahoods got a copy of a 2010 report*, Chronic Lyme Disease in British Columbia – a Review of Strategic and Policy Issues , commissioned by the Provincial Health Services Authority and clearly marked, "Not for distribution." Prepared by Brian T. Schmidt, retired senior vice-president of the provincial health authority, the report laid out the nature of the disease and offered several recommendations.

[6]

***New windows in B.C. Housing apartments. Change not directly related to suicide of tenant three years ago.* By Dan Hilborn, *Burnaby Now,* July 22, 2006**

Three years after Harry Kierans leaped to his death out the windows of his 14th-floor suite in the Hall Towers at Kingsway and Edmonds, B.C. Housing is halfway through a $4.6-million program of installing safer, smaller and more energy-efficient windows in the two highrise apartment buildings. *After filing a series of freedom of information requests to obtain their brother's government records, Harry's sisters received a stack of documents* measuring more than 22-cm thick including several memos that indicate Harry had made several requests to move out of the Hall Tower in the months leading up to his suicide.

[7]

***Daycare inspection reports don't mention losing kids.* By Staff, *CBC BC*, Jan. 10, 2014**

A Vancouver woman says she was shocked beyond belief to learn that daycare staff failed to notice when her two-year-old daughter wandered off and ended up alone outside in a parking lot. Rachel Garrick says young Henrietta had not been gone long when she wandered away from the Hastings Park Childcare Centre last November, but that fact is hardly comforting. When she could only find glowing licence reports and no mention of similar incidents, *she sent Vancouver Coastal Health, the licensing agency, a request under the B.C. FOI Act.* "I received that [response] last week and it was very upsetting to see in August, just a few months before Henrietta went missing, they lost track of another child."

[8]

***Abbotsford residents urge change in high-crash 'Sumas Prairie Speedway.'* By Dustin Godfrey, *Mission City Record,* Dec. 1, 2018**

A crash at the intersection of Dixon and Campbell roads left Camille Timmermans and her husband Nathan with long-lasting injuries, including a concussion and muscle issues. Joyce Verwoerd, who lives across the street from the Timmermans, adds grimly that an area resident only recently suffered that very fate. *Verwoerd recently filed a freedom of information request with the Abbotsford Police Department for the number of crashes and fatalities on the area's roads. The numbers are staggering*: 233 crashes in that time and seven deaths. That's two crashes per month and nearly one death per year.

[9]

***No discussion on school sale*. Letter by Linda Travers, Victoria resident, *Victoria Times Colonist,* Apr. 22, 2007**

The Greater Victoria School District's decisions to close schools and sell taxpayers' property without a clear, transparent process are unconscionable. For months, I have been trying to get meaningful information about the January sale of Fairburn Elementary to a private developer. Starting with rumours last fall I eventually learned that a real estate company was directed in November 2006 to sell Fairburn without notification to taxpayers and nearby residents. *My Freedom of Information request* revealed there was no board meeting to change Fairburn's status from a three-year lease to a decision to sell — in direct contradiction to a May 13, 2003, district press release confirming that "schools slated for closure will not be sold." Parents and others from Lampson, Cloverdale, Richmond and other schools are doing their part by providing trustees with excellent information.

[10]

***CSRD failed residents*. Letter by Dale and Karen Van Male, *Campbell River Courier – Islander,* May 2, 2007**

Re. your article "Dump trucks in school zone angers parents". The residents of the area are angry also. This has been an ongoing operation for four years with the last two years being the worst. Anyone living on Crawford or McLelan Road knows the magnitude of this operation…. One of the biggest blows to the residents was recently when *a copy of the Development Permit for the property in question was obtained, through the Freedom of Information Act*, and it became immediately obvious that the property owner was not living up to many of the terms and conditions as stated in the Development Permit and the Regional District was not enforcing it.

[11]

***Surface lease review finally released to public*. By Friedrich Hardy, *Alaska Highway News* (Fort St. John), June 8, 2007**

Last week, northeast landowners and interest groups received a review of oil and gas surface leases contracted by the provincial government in 2005, but it's left them to wonder why it came two years late. A number of Peace residents were involved in the compilation of data through

meetings and submissions, and at the time public policy consultant firm Perrin, Thorau and Associates said the report would be made public. But it wasn't until *resident Rick Koechl filed a FOI request on behalf of concerned landowners* that the final copy of the report "Availability of Information About Surface Access Leases" made its way into the region. The 43-page document reveals four recommendations that work towards providing landowners with sufficient information to negotiate surface lease agreements with oil and gas companies.

[12]

'Nuisance' gains privacy victory; School board will have to provide information about pedophile teacher. **By Janet Steffenhagen, *Vancouver Sun,* March 17, 2008**

School officials describe him as a nuisance, but the provincial privacy office has ruled that an Abbotsford parent who has doggedly asked questions about the handling of a pedophile teacher deserves answers. The decision is a victory for Greg Cross, who has been trying to get information from the Abbotsford board of education regarding Serge Lebedoff since 2001, when he reported disturbing behaviour by the teacher-on-call and was told by a school principal that an investigation was underway. Cross continued to ask questions. That prompted the board to appeal to the Information Commissioner for permission to ignore his requests, saying they were frivolous, vexatious, annoying and costly. But in a recent ruling, the office refused, saying Cross has a legitimate interest in the matter and the board must respond.

[13]

***Residents call for pedestrian walkway*. By Devon MacKenzie, *Peninsula News Review* (Sidney), Oct. 5, 2012**

A group of Central Saanich residents are banding together to call for a pedestrian walkway to be put in along a section of West Saanich Road. "We want this path primarily for safety and accessibility," resident Barb Whittington said. "According to a freedom of information request we got from the municipality, when this stretch of road was monitored from the fall of 2011 to the early spring of 2012, 100 per cent of the vehicles traveling down it were speeding, even after the speed limit was changed from 50 to 40 kilometers an hour."

[14]

No easy answers: FOI requests 'overwhelm' City of White Rock; Residents question city's responses. **By Melissa Smalley, *Peace Arch News* (White Rock), March 31, 2016**

White Rock residents say they are getting little response from the city on FOI requests, some dating back more than a year and are questioning why the process of accessing information is difficult. *Ross Buchanan is one of several residents to file a handful of FOI requests with the city*. Buchanan's requests have covered a number of issues in the city over the past two years, including correspondence about the then-proposed addition of chloramine to the water supply,

documentation of the city's research into joining the Greater Vancouver Water District and an untampered expense file for Mayor Wayne Baldwin for an 18-month period.

[15]

***Suicide prompts call for changes; Coroner*. By Cindy Harnett, *Victoria Times-Colonist,* May 4, 2013**

A coroner's report is calling for the files of all students with a diagnosed mental illness to be flagged, after a Victoria student with an anxiety disorder committed suicide after being kicked out of her school's gifted program. The report is a sober portrait of how the school system failed Freya Milne – an artistic, sensitive 16-year-old with "exceptional abilities and needs." An email *obtained by the family under FOI* shows the school's former co-ordinator of the gifted education program saw no compelling reason to give Freya "special treatment" because "she doesn't want to do an essay."

[16]

***Motocross track illegal*. By Ray Chipeniuk, letter to editor, *Interior News* (Smithers), May 23, 2012**

About a year ago, I came to the Interior News office to complain to the editor of that era about the abundant coverage given to the Smithers Motocross Association (SMXA). The main grounds for my complaint were that motocross is an illegal use of the land base where the SMXA operates and the noise from illegal motocross events is a nuisance for residents up to three kilometres away. For verification of the statements I make in this letter about land use, zoning, and even the term "illegal," *I encourage you to obtain the relevant documents from the RDBN. I did, through Freedom of Information, and I am not a reporter.*

[17]

***DNV developments flagged over traffic concerns; MLA cautions putting brakes on housing is no traffic fix.* By Brent Richter, *North Shore News,* Dec. 7, 2018**

The Ministry of Transportation and Infrastructure has flagged the District of North Vancouver, raising concern about the pace of development. The sentiments were spelled out in a series of letters from the ministry to district staff sent during the rezoning processes for a 150-unit townhouse project in Lions Gate and for the 411-unit Emery Village redevelopment in Lynn Valley. Kelly Bond, who with her fellow Emery Village renters is set to be demovicted in April, came by the letters via a Freedom of Information request she filed while informing herself about the development process.

[18]

***Unintended obfuscation?* By Paul Henderson, *Chilliwack Times,* Dec. 7, 2010**

Currently some residents in Yarrow have their collective knickers in knots because of a quarry operator's proposal to build a gravel conveyor belt system down the north face of Vedder Mountain to some properties on Vedder Mountain Road. Yarrow resident Victor Froese has been on the forefront of the battle to stop this particular project, which could basically turn a large piece of land into a gravel pit in his otherwise bucolic neighbourhood. *Froese and his neighbour Walter Raupach have been determined, and have gone so far as to make FOI requests to find out where the project is at.* At the newspaper, we are used to being led down the garden path either with distraction, misinformation or simply with language, so the persistence of Froese and Raupach is admirable.

[19]

***Our school trustees eating well*. By Cathy Wolfe, letter to editor, *Courtenay Comox Valley Record*, Nov. 4, 2008**

Through a Freedom of Information request, I have discovered how much the SD71 school board spent on catering from January 2007 until June 2008. During this 18-month period, the board spent about $146,500 of taxpayers' dollars to feed themselves, management and other SD71 employees at various meetings within the Comox Valley. This amount does not include expenses for the travel of trustees and district staff outside the district. I wonder how many lunch programs for needy students or how many learning assistance teachers or computers this money could have paid for instead, and how this huge expenditure benefited students at all.

[20]

***'It's all about trust'; Concerned residents pore over 6,000 pages about OSB plant*. By Matt Lamers, *Alaska Highway News* (Fort St. John), Oct. 17, 2013**

Greg Hammond knows the problems Peace Valley Oriented Strand Board has had in honouring its environmental commitments better than anyone. He owns land directly south of the particleboard plant, and says his land has been flooded twice "that we know about" with contaminated water, causing damage to the property. "The land's not the same," he said. *Due to the fruits of a long delayed FOI request - 6,190 pages of documents - a group now has the information to help explain why the land may have changed*, and how Peace Valley OSB repeatedly ran into major problems with British Columbia's environmental regulations while the land was changing. One ministry letter told of how Peace Valley OSB's dryer stack failed to comply with the province's regulations for formaldehyde and air flow rate.

[21]

***Canada Line operator ordered to reveal its deal with TransLink*. By Kelly Sinoski, *Vancouver Sun,* April 8, 2009**

The operators of the Canada Line have been ordered to reveal all the details of their agreement with TransLink, despite claims by Canada Line Rapid Transit Inc. that it would lead to an increased risk of terrorism and cause financial harm. Celia Francis, senior adjudicator for the Information Commissioner, said Canada Line Rapid Transit and InTransitBC did not provide sufficient evidence to "establish a reasonable expectation of harm flowing from disclosure." She ordered all information of the concession agreement be made available to lawyer Cameron Ward, who filed the FOI request, within the next 30 days. *Ward represents former Cambie merchant Susan Heyes, who successfully sued TransLink, InTransitBC and Canada Line Rapid Transit for $600,000 in damages after losing business* as a result of tunnel construction along Cambie Street.

[22]

***Schools group questions information from district.* By Staff, *Harbour City Star* (Nanaimo), Dec. 27, 2013.**

Members of the *Save Cedar Schools coalition* have questions about information they received from the Nanaimo-Ladysmith school district. Spokesman Steve Rae said the coalition is sifting through more than *6,000 pages of correspondence and material related to schools in their area that they requested from the district in a FOI request.* "We've spent $2,000 and more than four months of our time on trying to get this information and all we received was an incomplete record of what we wanted," Rae said. "We've been in contact with the Ombudsman's office and are asking that an investigation be held into this issue." The district contracted a consultant, at a cost of $10,000, to help comply with three FOI requests regarding the district's plans for schools in Cedar.

[23]

***WCB doctors too old to practice*. By Barbara McLintock, *The Province* (Vancouver), Apr. 10, 1997**

The fate of some injured workers in B.C. is in the hands of retired doctors who aren't even allowed to practise any more, charges NDP MLA Rick Kasper who cited in the legislature the case of one of his constituents who found that two of the three doctors on his Workers Compensation Board "medical review panel" were no longer on the active list kept by the College of Physicians and Surgeons. Instead, they were "life members" — a category reserved for retired doctors who are specifically banned from "practising medicine for gain," Kasper said. But *the injured worker involved, Clayten Adkens, from Sooke, told The Province that when he used FOI to research his own case,* he found one of the doctors had been paid about $1,300 for his case alone. "I wanted to know what the qualifications were of the doctors on my case," said

Adkens, a welder with lung damage. “But when I looked at the (college’s) list, I couldn’t find two of the names there at all.”

[24]

***Terry Jacks’ longest season*. By Stephen Hume, *Vancouver Sun,* Dec. 2, 2000**

The story began five years ago when a call from a shift worker at Howe Sound Pulp and Paper in Port Mellon *tipped former singer Terry Jacks that the mill was not in compliance with its emission permits for sulphur dioxide and nitrogen oxide.* Jacks says he didn’t take the tip at face value. Instead he filed freedom of information requests with the provincial environment ministry for data comparing emissions from pulp mill stacks with the levels set under the pollution permit granted by Victoria. The bureaucrats led him on a merry chase, he says. But he persisted and he finally got the statistics he sought.

[25]

***Safe, quality daycare was all she wanted,* by Deborah Pearce, *Victoria Times Colonist,* March 23, 1997**

The Capital Regional District released details to the Times Colonist – through the initial FOI work of concerned mother Brenda Day – of problems involving day-care operator, Sunny Times Day Care, exposing a sorry history of complaints from parents about the treatment of their children while at the still-operating facility. Columnist Deborah Pearce said that only days after her story appeared, “parents started coming out of the woodwork with complaints against the woman who ran the place.” In the end, the manager voluntarily surrendered her day care licence, and promised to close her facility. *Pearce said later “in my opinion Sunny Times would still be operating without FOI.”*

[26]

***Peeved pop says pupils political pawns,* by Gordon Clark, *The Province* (Vancouver), Feb 5. 1997**

The NDP was accused of putting politics ahead of children in its handling of new school funding. *Dr. Murray McFadden, a Langley parent-activist, said cabinet ignored an objective list prepared by the education ministry ranking 64 school projects in order of priority.* Only three of the 11 new schools projects announced Monday -- all in NDP ridings -- were on the list. "I would say there is child exploitation there," he said. "Because the needs of the kids of all the province should come before any partisan political needs of any party." *He obtained the list through FOI,* and wondered why Ron Brent elementary, curiously in Education Minister Paul Ramsey's town, was able to jump over 60 other schools waiting for funding. Vancouver school board co chairwoman Sandy McCormick said she was upset that Magee, in a Liberal riding -- the school at the top of the ministry list -- was ignored. She said the school is badly overcrowded, has asbestos- hazard problems and had to evacuate most of its top floor after recent flooding.

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[27]

***Letter: Parksville's mayor has some explaining to do*, by Carl Anshelm, *Harbour City Star* (Nanaimo), Sept. 4, 2002**

Despite two requests, in writing, the Mayor has declined to inform the taxpayers of the financial status of her multimillion dollar 'vision and dream' – the Civic and Technology Centre. Failing response from the Mayor, the writer, under provisions of the Freedom of Information Act, followed up by a formal complaint to the FOI commissioner, the following details were released: 1. The amount of money borrowed to date as authorized by referendum is $4,550,000. 2. The interest paid to date on borrowed funds – $374,745. 3. $1,050,000 of the amount borrowed and $59,745 of the interest is being repaid from lease revenues received by the city from the Vancouver Island Regional Library.

[28]

***Mom mad at school board: No thanks for lobbying, she's called gay activist*, by Sheryl Yaeger, *The Province* (Vancouver), May 25, 1997**

Surrey parent Jackie Ward is miffed that, after bringing in more than $70,000 for a new school, her only recognition was to be called a homosexual activist. Robert Pickering (the board's chairman) has been vocal in his opposition to teachers receiving education about recognizing and assisting homosexual students. Ward, who is one of three members of Heterosexuals Exposing Paranoia, said the board is being run by personal agendas. She noted that while Pickering says the school board is trying to get more money from the province, a freedom-of- information request showed that he has written one letter in six months, and it wasn't about funding.

[29]

***Health authority intervenes at yet another China-owned senior home; Official highlights concerns about insufficient staffing, lack of cleanliness*, by Joanne Lee-Young, *Vancouver Sun,* Dec. 13, 2019**

Sandra Hawkes is watching as health authorities on Vancouver Island have intervened at another senior care home owned by a Beijing company and is wondering why the Fraser Health Authority isn't taking similar steps. In 2017, Ottawa approved a $1-billion-plus deal for Anbang Insurance Group to buy Retirement Concepts and its 20 senior care homes, including Waverly. It was controversial from the start. Critics argued patient care could be harmed under a foreign company that revealed little about who actually owned it, which is a requirement under federal investment rules. *Hawkes has spent months requesting more specific details about inspections through FOI requests.* This has yielded inspection reports for Waverly in 2017-19 showing licensing officers making repeated requests for "corrective action" by certain dates.

[30]

***B.C. school size rules ineffective, critics say*, by Zak Vescera, *Vancouver Sun*, July 22, 2019**

Trustees, teachers and parents say the province's school-design rules are out of step with student needs and modern curriculum…. The standards mean some of those rebuilds, like the one scheduled for Eric Hamber Secondary, will be significantly smaller than their predecessors. Vik Khanna, a tech entrepreneur who has a son attending Hamber, says he's concerned the new school will be more than 30 per cent smaller even though it is earmarked to accommodate the same number of students. The Vancouver school board has appealed to the ministry for more funding for the Hamber project, which is already set to cost $79.3 million. *Khanna says responses to FOI requests he filed indicated adding the space could cost as much as $20 million more.*

Appendix 2

The *B.C. FOI News Story Index* - Introduction

See the Index at - **https://canadafoi.ca/bcstoryindex.xlsx**

Produced as a reference for journalism students, this Excel database contains a summary of every significant news article I could find that was produced from records obtained through requests under the B.C. *Freedom of Information and Protection of Privacy Act* since the law took effect on October 1, 1993, until the end of 2020.

The search was extensive, through mainstream newspapers, radio and` TV – as well as small rural newspapers, student, alternative and online media. More than 2,000 news stories were found, and placed in 24 categories. The *Index* is best viewed on a large screen, and the topics are word searchable, by Ctrl-F. Other features:

• Alongside several stories I have placed a **{*}** symbol, to draw attention to what I believe is an especially interesting, timeless or historically important FOI example (and time-pressed readers could skip ahead to these results). A few have even led to investigations, regulatory changes, and relief or justice for affected persons.

• Many of the articles are not based upon FOI requests filed by journalists, *per se*, but from those filed by interest groups (most often environmental), or opposition parties, or the participants in events, who then in turn shared those records with the news media.

• The main focus of this database is the BC FOI law. Yet one can also click on the **red tab** at the bottom to see fascinating stories about this province produced via the Canadian federal *Access to*

Information Act (1982) - mainly on records from the RCMP, Health Canada, and Environment Canada. Then, within that second red-bannered worksheet, one can scroll to its bottom, below the **orange bar**, to find articles produced via foreign FOI laws, mainly American. (One can click on the **blue tab** to return to the B.C. stories.)

• For FOI appellants and media lawyers: When contesting FOI obstructionism at inquiry before the information commission or courts, one can search this database for the types of records that have been released under FOI before, and therefore ideally should be again. This can also be done via the sectional index of OIPC rulings at - https://www.oipc.bc.ca/rulings/sectional-index/

• Taking the world view, such an FOI story database could be replicated in any province or state, indeed any country, and I would encourage this for the benefit of the public and journalism students (for it could also serve a source for story ideas). A non-profit group could hire a researcher, journalism student or retired reporter for this task, and perhaps update it yearly.

A fourfold purpose for the *BC FOI News Story Index*

(1) The Public Interest

I believe the value of FOI needs to be demonstrated rather than just asserted. If the public asks, "Why should we care if we have a good FOI law?", a kind of answer can be found here. Every British Columbian who browses this database for an hour will find it time well spent, I guarantee. To dispel the idea that FOI is mainly utilized by the big city press, I searched all B.C. local newspapers from the *Agassiz-Harrison Observer* to the *Williams Lake Tribune* to find dozens of local stories from every part of this province (and all the media have a common cause in better FOI laws).

The vast range of FOI topics is quite astonishing, covering the whole spectrum of society, from the cabinet office to Vancouver's Downtown Eastside, from farms to coal mines, from nursing homes to logging roads. Most powerful are the sections on the shocking mistreatment of children, seniors and animals. The old adage of journalism's mission being "to afflict the comfortable and comfort the afflicted" has been well realized here, with news that can bring some degree of justice to the powerless, and voice to the voiceless.

For many readers, the most interesting and moving summaries may be found in Category 6 – Personal Requests (perhaps the best place to start reading the *Index*). These 65 stories are based on FOI requests that were filed not by journalists but by individuals or their family members often in some form of distress. Working to improve their lives, they obtained documents that helped some to clear their names of false allegations, or aided adoptees to find their true parents, or enabled others to obtain redress for childhood abuse, or workplace injuries, botched surgeries, hepatitis C infections, schoolyard bullying, land appropriations and rental

evictions. It shows that obtaining records is not solely within the purview of experts, and their usage best demonstrates the professed goal of the FOI law – to empower the average citizen.

The first and lengthiest category concerns your money. In articles that may prompt reader groans and/or chuckles, FOI revealed how the public treasury was sapped as your tax dollars went to a $572,000 severance for a former city manager for 19 months service; or $9 million in severance for fired political appointees after the 2001 election (one gaining $177,475 for seven months work); or a PR spin-doctor charging $75,000 in moving expenses to relocate from Victoria to Vancouver; or two university deans gaining $500,000 interest-free housing loans each; and so on and on.

Overall, these stories on issues as diverse as health, safety, financial waste, public security, and environmental risks share two common features: all reveal issues critical to the public interest (*i.e.,* not merely topics "the public might find interesting," as some officials say), and all were made possible only through FOI requests. They belie the most pernicious, self-serving myth of all – "What the people don't know won't hurt them."

Here we can see politicians contradicted by policy experts, warnings not heeded, the hypocrisy of preaching one course in public and doing the opposite in private, draft reports watered down for their final public versions, and more (particularly for those adept at reading between the lines). In stark contrast to the bland, vague reassurances of government public relations, we encounter the sharp bite of reality as we read in graphic detail inspectors' reports from the trenches.

The articles require a second look, for when they appear in daily media they may be forgotten within days, but many should not be, because we could be living continuously with the unresolved or recurring problems that they have raised. Moreover, not every FOI story necessarily reveals a scandal, but can still be valuable in educating the public on the scope of a little-known issue, and on how government operates. My fondest hope is that the public may finally realize that not everything good can be had for free online, and here see the value of FOI journalism, enough to financially support its production, and so to ensure its survival.

This catalogue is also a necessary and powerful corrective to a ruling party's zealous loyalists and the bureaucracy's professional obstructionists. These often try to trivialize and discredit the FOI law by fixating on what they call the "frivolous and vexatious" usage of it (e.g., "Those malicious and time-wasting gadflies swamp us with hundreds of systematic requests – at the taxpayers' major expense - for every lunch and taxi expense chit, receipts for office carpet replacements, etc.").

Such requests might indeed occur, but at the same time such critics always remain *silent* upon the many creditable revelations - of human abuse, wasteful spending, environmental damage, the personal cases cited in Category 6, and other grievous public harms – which were only made possible through FOI. The latter was surely the goal of premier Mike Harcourt who passed the law, and whom told the Jack Webster journalism awards dinner in 1993 (as I well recall), "We passed an FOI law so you folks could do more stories."

Moreover, while critics complain of the cost of administering the FOI law, it is really a miniscule fraction of the B.C. budget. In fact, the FOI system often saves public funds, because public outrage over misspent money – revealed via media FOI requests – has induced government to trim the waste and tighten controls.

The most common theme that emerges from the stories is *the hidden misuse of power*. Its exposure by FOI is usually (but not always) followed by justice, restitution, and improvements. On government misdeeds, it has been well said, "sunlight is the best disinfectant," a relief to the public from the dark night of ignorance, and one of the few ways to end some forms of grotesque wrongdoing that can only thrive in secrecy. Whenever officials claim they want to withhold records because of fear the public might "misunderstand" them, it is more often the case they fear the public will understand them all too well.

Yet with Canada's ineffectual FOI laws, we can produce far fewer FOI news stories than the American press does. In fact I often use the FOI law of Washington State, and the contrast in responses with B.C. is like night and day. The loss of hundreds of such untold and untellable news articles in the public interest that might have been possible amounts to a world of lost opportunities. This *Index* may bring an ironic, unintended consequence, whereby officials may say: "Look - this database demonstrates the law is working very well. Therefore no law reform is needed." No. The key point, which I cannot overstate, is this: If our FOI laws were raised to global standards, this story list would – and should - have been twice as long.

Overall, these stories can serve as an antidote against despondency or cynicism regarding the eroded B.C. FOI system, for they show how journalists can still overcome the barriers of bureaucratic and political resistance to produce valuable results. But now imagine losing them. There are many such articles from the 1990s golden age of B.C. FOI (relatively speaking) that one simply cannot see any more today because officials have so undermined the FOI law and exploited its gaping loopholes. In response, many journalists (i.e., those that remain) have simply given up on the FOI process - a most regrettable error I believe. Our task should be to revive the spirit of the 1990s in which such fine work was possible. Why should we - or the public - accept anything less?

(2) To encourage needed FOI law reform

This second purpose stems directly from the first. It is well known that B.C. and Canadian FOI laws have fallen far behind the rest of the world (as detailed in my book on global FOI, *Fallen Behind*). Urgently needed reforms have stayed frozen in a circuitous time warp for decades, while a longtime B.C. legislative columnist has well described the B.C. government's transparency record as "the shame of the province." These stories demonstrate the value of keeping the FOI system alive, particularly after the passage of the NDP's notorious Bill 22 in November 2021.

(3) An incentive and story idea generator for journalists

Beyond an archive, this catalogue (which can be updated continually) was also intended to be used as an active tool for both journalism students and working reporters.

In their spare time, they can browse through the subjects, in Column B, for story ideas, and the database is topic word searchable by Ctrl-F. Even with the state's new FOI obstructionism, many records that were obtained before can often be retrieved again; this is at least worth trying. Reporters from other provinces may find it interesting also, for a certain type of record obtained by FOI from one crown corporation, health authority or city hall can likely be obtained from the same type of entity anywhere else.

Sometimes to enhance the story, the media post the original records on their websites, and the *Vancouver Sun* laudably constructed searchable databases for the public on government salaries, and nursing home and daycare inspections.

Even in these challenging times, the news media still work as an indispensable bridge between government and the public; the vast majority of Canadians will never file an FOI request, and so, by default, the records that the media requests will generally provide what the public sees. Although the press in Canada generally file only between five to ten percent of FOI requests, the benefit to the public interest is felt far beyond these statistics.

Compared to regular media (transcribing council meetings or recycling press releases, with the agenda set by others), FOI news is proactive, breaking new ground, working against the grain. The general topic investigative reporter is the wild card of democracy, surprising readers and responding to secretive governments in the spirit of the Colorado *Aspen Daily News* motto: "If you don't want it published, don't let it happen."

Some FOI stories remind one of a lightening flash in the night, waking the public from its sleep, which is followed by a short pause, then a thunderclap (equivalent to the next day's reaction after the story to the misdeeds revealed). To bypass public relations spin and "pack journalism," such articles are welcomed by a public starved for substance - stark and needed factual correctives to a Trumpian, fact-free, "post-truth" age, where taxpayer-funded PR staff outnumber news reporters by 5-to-1 (an ever expanding ratio, lamentably), and the media are awash in oceans of social media, ads, entertainment and trivia.

(4) The historical record

The *Index* can be of interest for local historians, sociologists and political scientists also. Scrolling through it, some may have almost the sense of reading a parallel history, one perhaps more "real," running concurrently to the official version the public was meant to see. (On occasion one might also wonder here if "those who do not remember the past are condemned to repeat it.")

In this digital age, as time accelerates with ever shortening public attention spans and competition for our attention, it is all the more necessary to pause for an hour, and take stock of all the B.C. media have achieved with FOI over the past quarter century. Memories grow faded and distorted with time, but written records remain fresh and accurate. (Some of the earliest articles were not posted online, and even most of those that were have long ago been deleted from the internet, and are certainly not retrievable by Google.)

Last month's events are overridden in the river of time, what is out of sight is generally out of mind, and yesterday's articles are forgotten as "old news." Yet many should not be because we could be living continuously with the unresolved or repeated problems that they have raised (e.g., a decade before the Peter German report on money laundering at B.C. casinos, the CBC revealed the problem in an FOI story of May 21, 2008). Even dated or resolved issues can still provide an interesting record of social history.

Finally, another goal is to preserve and appreciate the writers here – enterprising sleuths and nobody's fools, shining needed spotlights into the darkest corners, working without fear or favour, never mistaking quantity of information for quality, nor swallowing the official line. (Barbara Yaffe of the *Vancouver Sun* has the honour of being first, one month after the law took effect, producing an FOI-based story on November 6, 1993 on lavish spending by B.C.'s agent-general in London.)

Some fine stories - which readers may have forgotten or missed upon their first publication - have received journalism awards, while others should have. Browsing this index makes us feel all the more acutely the retirement of such prolific FOI champions as Stewart Bell, Larry Pynn, Kim Pemberton, Ann Rees, Chad Skelton, Janet Steffenhagen and others. Yet we can take much hope from the superb FOI articles being produced by the new generation of journalists such as Sam Cooper, Zac Vescera, Travis Lupick, Tyler Olsen and Bethany Lindsay.

When seen in such a database, the stories are re-contextualized; quality FOI articles that frequently appeared in the 1990s and were taken for granted now assume a new stature in these barren news media times, one that will likely only grow in the years to come. Journalists who write "the first rough draft of history" can be needlessly modest at times, and their historical influence may be overlooked.

("Another problem is that historians, disdaining journalists and their work, often ignore them. . . . the old feeling, never abandoned in the newsroom or university, [is] that journalists are somehow inferior creatures, involved in practices akin to, say, poultry or mortuary science, not in a high and honourable calling." - *Muckraking,* edited by Judith and William Serrin, 2002)

Professional newsgathering is *not* a sunset industry, even (especially rather) in a so-called "post-truth era." While these times are extremely challenging, obviously, it can help us to glance backward to draw inspiration from our pioneers. Some such articles here can galvanize us today, and are quite easily updated or replicated. It is vital for the public interest to pass on the FOI journalism torch to new generations of investigative reporters, of whom there will surely be.

The B.C. media's service to the openness cause was noted by the province's first Information and Privacy Commissioner David Flaherty (even despite FOI-based news stories

sharply critical of his travel spending), a privacy expert whose rulings, candidly speaking, were mostly deleterious to transparency. His words below are even more important today in this age of newsroom reductions than two decades ago. In his final annual report of 1998/99, in *Ave Atque Vale*: Hail and Farewell, he wrote:

> I wish to close on a note of high praise for the media in this country, in at least partial response to the recurrent attacks on them by politicians in particular. I am not thinking here of the issue of trying to balance competing interests of accountability and privacy in the dozens of decisions that I have made in response to media requests for access to information. Nor am I selfishly reflecting my strong sense that the media would have had to be my ultimate defenders, as surrogates for the public, if the politicians and government of the province had chosen to turn against the *Act* by, for example, abolishing it. There have been times when I did not regard this as an idle threat.
>
> At the end of the day, my privileged vantage point of the past six years has fully persuaded me that a free press is absolutely fundamental to the preservation and advancement of an open and democratic society in British Columbia and Canada as a whole. Becoming fully persuaded of what may strike some as a truism has been an added benefit and lesson from my experience in public office. It has been worth it.

Most impressive stories have been done in the first three decades of FOI in B.C., and overall they have surely helped make this province a better place to live. But if we accept our decrepit Canadian transparency laws and subverted processes, will we see far fewer stories such as these? Or will we ensure improvements so as to make it possible that the best is yet to come? Although it may appear a bleak dystopian landscape for Canadian FOI journalism today, it is essential to view this situation as neither necessary nor inevitable. Most FOI misfortune happens mainly because we permit it to happen, and the choice is ours.

This project was made possible by support from

Thomas Crean, and the B.C. Freedom of Information and

Privacy Association (FIPA)

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Appendix 3

65 fine news stories published with records obtained under

the B.C. *Freedom of Information and Protection of Privacy Act*

From 2,000 articles at the *B.C FOI News Story Index* - https://canadafoi.ca/bcstoryindex.xlsx

Collected and summarized by Stanley L. Tromp, 2022

[1]

***Internal government documents reveal B.C.'s 9-1-1 system was unprepared for heat wave, as NDP set to weaken information-access laws*. By Wendy Cox and James Keller, *The Globe and Mail,* Oct. 27, 2021**

The B.C. Opposition Liberals released documents obtained under the FOI act to show that the province's E-Comm system, the agency that manages 911 calls, was woefully understaffed. In early June, three weeks before a deadly heat wave, a data analyst for the agency warned that calls for an ambulance had been going up and the response time by the ambulance service had been declining. The analyst wrote that the BC Ambulance Service "is compromising public safety overall by negatively impacting 911 answerability." Between June 20 to July 29, historic heat records were shattered and the BC Coroners Service and the province reported 569 "heat-related deaths." As calls flooded in, 911 operators had a duty to stay on the telephone with the person seeking help until either fire or ambulance paramedics could respond. But staff in those services were themselves backlogged, waiting for patients to be seen in emergency rooms. As a result, some operators were on calls for hours with increasingly desperate people and were unable to pick up other calls coming in.

[2]

***Hundreds of thousands of chickens died during June heat dome: reports*. By Denise Ryan, *Vancouver Sun,* Sept. 27, 2021**

It wasn't just humans that suffered during the deadly heat dome that punished B.C. in June. At least 651,000 animals died on farms as a result of the heat wave, the vast majority of them

chicken and other poultry, according to records obtained by animal justice advocate Camille Labchuk through a freedom of information request. Chickens are particularly vulnerable to extreme heat because they can't sweat to cool down. During a heat wave, the birds can pant, ruffle their feathers or hold their wings out to try to cool themselves, but require additional help such as cooling pads, tunnel ventilation and fans. Documents obtained by Labchuk, executive director of Animal Justice, show that the B.C. Chicken Marketing Board recorded 416,146 deaths during the heat dome June 24-30; the B.C. Egg Marketing Board noted 145,000 deaths; the B.C. Turkey Marketing Board had 61,000; and the B.C. Broiler Hatching Egg Commission reported a loss of 29,210 animals.

[3]

***Preventing Low Supplies of PPE in B.C.* By Jon Woodward, and Bob Mackin, *CTV Television, and The Breaker,* July 18, 2020**

In 2014, Ebola ravaged parts of Africa and cases even showed up in the U.S. In response, B.C.'s health authorities donated essential masks and other personal protective equipment, $1.6 million worth. Trouble is, it wasn't replaced. So when the coronavirus arrived in B.C. this year, there wasn't nearly enough supply. Internal documents obtained through FOI show that wasn't the only factor that decimated BC's PPE stockpiles between 2013 and 2019. Around 20% expired and around 15% were taken out for everyday use. At the end of it all, BC had lost about two-thirds of its PPE, with officials warning in January, "should a widespread pandemic occur in B.C., the current level of pandemic supplies will likely not meet B.C.'s requirements, which may lead to a public safety risk," a risk that materialized.

[4]

***Rapists, pimps allowed to keep jobs working with children*. By Stewart Bell, *Vancouver Sun,* Oct. 23, 1997**

The *Sun* reported that pimps, rapists and other convicts had been cleared to work with children by B.C.'s criminal records review panel. The $1-million B.C. government screening program for people working with children deemed people with records for serious sexual offences and/or violent crimes to be “no risk.” The 217 declared "no-risk" included those with criminal records for sexual assault, sexual interference, living off the avails of child prostitution, indecent acts, assault, kidnapping and drug trafficking. The story was based on data that Bell obtained by FOI from the Ministry of the Attorney General. The next day, NDP Attorney General Ujjal Dosanjh ordered an investigation.

[5]

***B.C. College of Teachers keeps some bad records spotless; Incidents of a sexual nature, violence, wiped from histories*. By Janet Steffenhagen, *Vancouver Sun,* July 5, 2011**

Scores of educators who were investigated and disciplined by their employers for misconduct - including inappropriate relationships with students, violence, threats and theft - remain members

in good standing with the B.C. College of Teachers. Documents obtained via FOI by The *Sun* show that the college, which is responsible for regulating the profession in the public interest, handled many cases of proven misconduct in a way that left disciplinary records clean. Not only is the public unaware of these transgressions, but so too are boards of education and their hiring authorities, the college admitted. Dozens of cases were dismissed by the college's preliminary investigation subcommittee without action or settled informally, including some that involved sexual interference and intimate relationships with minors; slapping, shoving and punching students; consuming alcohol during class; threatening and stalking colleagues; and accessing child pornography on a school computer.

[6]

Children in ministry care at risk as system in crisis, audit reveals: Girls placed in homes with "sexual deviants" are one example of a program near collapse. **By Jeff Lee, *Vancouver Sun*, Sept. 17, 1999**

An internal audit of children in provincial government care found girls placed in homes housing "sexually deviant males," young children sharing homes with teens with behavioural problems, and unlicensed group homes that offered inadequate food. The auditors' report found serious deficiencies in virtually every area of the province's children-in-care program, including an extraordinary turnover of foster parents and an inability to find enough qualified, trained replacements. In some cases unlicensed group homes were run by unskilled staff and employees had criminal backgrounds, despite the fact criminal record checks are mandatory.

[7]

B.C.'s child labour laws make Canada look bad; Why should kids work at 12? **By Catherine Evans and Adrienne Montani, editorial, *Vancouver Sun*, July 11, 2016.**

In 2004, when the B.C. government lowered the work start age to 12, our province became an outlier among developed states around the world. Nowhere else are there so few restrictions on the type of work children can do at such a young age. WorkSafeBC does not publish reports on how many children under 15 are injured on the job. We know, however, from interviews with children and FOI requests to WorkSafeBC that children under 15 are working in B.C. and some of them are getting hurt. Having even one child injured at work badly enough to be reported to WorkSafeBC before that child has even completed their compulsory schooling is not the message that Canada and Canadians want to send to the rest of the world.

[8]

Warning: Not for kids: Despite the risks, babies and toddlers are being prescribed anti-psychotic drugs that are not proven safe for young patients. **By Ann Rees, *The Province* (Vancouver), Dec. 20, 2000**

Hundreds of youngsters are being prescribed anti-psychotic medications which are not proven to be safe for young patients. In many cases the mental disorders they are suffering are so serious that doctors believe benefits from the drugs outweigh the risks. The drugs have never been proven safe for young children. Doctors across Canada were shocked to learn the youngest patient on an anti-psychotic medication in B.C. last year was a baby boy under a year old who was prescribed a drug called haloperidol. Yet in B.C., haloperidol was prescribed to 136 patients under age 20 last year -- and 25 of them were 10 or younger, according to data obtained through Freedom of Information from the provincial PharmaNet prescription drug database.

[9]

***Woodlands residents were sterilized: Internal documents also outline cases of assault, abuse*. By Kim Pemberton, *Vancouver Sun,* March 4, 2002.**

At least four mentally disabled residents of Woodlands Institution were sterilized, according to internal documents obtained by *The Vancouver Sun*. The documents, which took one year to obtain through FOI, also confirm earlier Sun reports that some mentally disabled residents were physically assaulted, verbally abused and inhumanely treated while living at the provincial home for the mentally disabled in New Westminster. *The Sun* also found documents on abuse cases not previously reported, including the case of a resident who was frequently shackled to his desk over an eight-month period to prevent him from running away from school.

[10]

***The Shock Treatment - Electroconvulsive therapy remains a popular but controversial treatment.* By Danielle Egan, *The Tyee*, Aug. 24, 2018**

In B.C. forced psychiatric detainment has doubled over the past decade, and ECT rates have spiked 36 per cent since 2011. This controversial treatment can even be forced upon non-consenting citizens, according to the BC Mental Health Act, a policy currently being challenged in the BC Supreme Court, by the Council of Canadians with Disabilities, which initially filed the suit with two plaintiffs, including a 66-year-old former nurse who was involuntarily detained and forced to undergo ECT hundreds of times. The Council had no data on the use of involuntary ECT use in B.C., so I recently applied for that data, via an FOI request. That data revealed that 280 citizens were forced to have ECT last year, up from 254 in 2007, the earliest year of the available data. Last year, 39 of these people were over the age of 75.

[11]

***Why aren't inspection records public?* By Chad Skelton, *Vancouver Sun*, June 21, 2008**

Earlier in 2008, *The Sun* filed a series of FOI requests to Fraser Health and Vancouver Coastal Health, asking for a large volume of inspection data, including reportable incidents. *The Sun* has now made that data available on its website through a series of searchable online databases at www.vancouversun.com/care/. The databases, which can be searched by a facility's name, allow

users to see a wide variety of inspection data for more than 3,000 licensed care facilities across the region -- not only daycares, but long-term care homes, drug rehab centres and group homes for the disabled. The databases show the current risk rating (high, moderate or low) for every licensed facility in the region. And they include a list of every serious incident reported by each facility -- such as abuse, neglect and medication errors -- a total of 35,000 incidents in all.

[12]

Chokings, sex attacks and suicide, but no details. **By Sam Cooper, *The Province* (Vancouver), Oct. 19, 2011**

A three month-investigation by *The Province* using FOI law has brought to light some alarming statistics about conditions in B.C. care homes. From 2008 to the present, in Interior Health residential facilities, there have been 12 "patient safety event causing death" incidents, 25 cases of "sexual incident toward patient," plus 692 "physical toward patient" incidents. In Vancouver Coastal licensed care homes, there were 26 attempted suicides, 18 chokings, 44 disease outbreaks and 42 medication errors. In Fraser Health licensed facilities, there were 70 unexpected deaths, 120 disease outbreaks, 15 cases of neglect and seven poisonings. These statistics are certainly alarming when viewed out of context, but because of information roadblocks - including a complete failure to release information by Vancouver Island Health - The Province is unable to tell readers exactly what they mean.

[13]

***Policy that hurts elderly driven by Liberals, NDP charges: Regional health officials only following policy, MacPhail says*. By Craig McInnis, *Vancouver Sun*, July 27, 2002**

A new provincial policy that splits up elderly couples when one partner has to go into a nursing home is being driven by the government, not the regional health authorities, B.C. New Democratic Party leader Joy MacPhail said. She made the comment after releasing documents, obtained under the Freedom of Information Act, that detailed the new policy, which was part of the major overhaul of the health-care system announced this spring. MacPhail said the documents show Liberal government policy is responsible for the wrenching stories of elderly couples who have been separated since the changes took effect.

[14]

SkyTrain's Mounting Death Toll. Experts urge platform barriers already saving lives in other cities. **By Bob Mackin, *The Tyee,* Nov. 18, 2008**

British Columbia Coroners Service statistics obtained through FOI reveal that at least 54 people have died on SkyTrain tracks and platforms since 1985. Ten deaths were accidental, and the rest were suicides. The SkyTrain president said there is no plan to retrofit any Expo Line or Millennium Line platforms with barriers to stop people from falling or jumping on tracks. Past

Olympic cities like Beijing and Torino have such barriers on their new rapid transit lines, as do Hong Kong, Las Vegas, London, Paris and Singapore.

[15]

***Briefing note: taller wood-frames have "significant" fire safety concerns*. By Sean Holman, *Public Eye Online,* April 1, 2009**

A briefing note prepared for the B.C. Housing and Social Development Minister advised there would be “significant" fire safety concerns with five and six storey wood-frame buildings. But despite that note, obtained by Public Eye via FOI, the government moved ahead with its plan to permit the construction of those controversial buildings. Premier Gordon Campbell first mentioned the possibility of taller wood-frames at the Council of Forest Industries annual convention on April 16, 2008, telling attendees, “Wood can be used up to four storeys. Let's push that ceiling." But the note warned “combustible buildings higher than three or four storeys are considered to present a significant fire load," and that increasing their height “will likely meet firm resistance from building and fire officials."

[16]

***106 chairlift 'incidents' in 2008*. By Larry Pynn, *Vancouver Sun,* Feb. 21, 2009**

The eyes of the world turned to the Whistler ski resort when a gondola tower collapsed, leaving dozens of skiers and snowboarders stranded or injured and raising the spectre of a similar disaster during the 2010 Olympics. However, FOI documents show that scores of accidents at B.C. ski resorts go unpublicized and that visitors are far more likely to be injured while loading, unloading, or just falling off a lift. The B.C. Safety Authority recorded 106 "reportable incidents" at ski hills in 2008, including an unlucky 13 persons who plunged as far as nine to 12 metres from lifts, some suffering serious injuries in the process. Grouse Mountain recorded the most falls from lifts at three, followed by two each at Mount Seymour, Blackcomb, Whistler, and Kimberly Mountain.

[17]

***Violations 101*. By Stanley Tromp, *Vancouver Courier,* June 24, 2011**

An audit by the Ministry of Finance (obtained via FOI) highlighted many safety violations, fire hazards, and “general neglect over a long period of time” - at Vancouver Community College. KD Engineering, VCC’s former building management company for 31 years, had been hired without tender, and had been paid about $1 million a year with no written contract.
A lack of inspections of the King Edward diesel shop exhaust system "contributed to potential carbon monoxide poisoning." The fire pumps at each campus were not tested monthly to ensure they were working. The emergency back-up electrical supply for the fire pumps, was not operable. "No effective oversight of this contractor's performance, leading to significant non-

compliance with life-safety laws," the audit concludes. In sum, the health and safety of 25,000 students and children in the KEC daycare may have been placed at risk for years.

[18]

***B.C. dairy farm inspections reveal animal welfare breaches; Overcrowding, tails accidentally torn off, dehorning without pain medication among the findings at one in four B.C. dairy farms*. By Larry Pynn, *Vancouver Sun,* Sept. 18, 2016**

More than one in four B. C. dairy farms failed to comply with a provincial Code of Practice related to animal welfare during an 18-month period, inspection documents obtained through FOI show. Issues revealed during routine inspections by the B. C. Milk Marketing Board showed overcrowding, lame or soiled cattle, tails accidentally torn off by machinery, branding and dehorning of calves without pain medication, and cows lying on concrete. Postmedia News obtained the inspection reports after the release of disturbing undercover video shot at a major Chilliwack dairy operation in 2014. "It shocked a lot of us," said Tom Hoogendoorn, vice-chair of the B. C. Milk Marketing Board. "Hardened farmers were crying when they saw that." The B.C. SPCA described it as showing "employees at Chilliwack Cattle Sales using chains, canes, rakes, their booted feet and their fists to viciously whip, punch, kick and beat the dairy cows, including downed and trapped cows who could not escape the abuse."

[19]

***Provincial documents shed light on the darker side of horse racing.* By Larry Pynn, *Vancouver Sun*, Dec. 27, 2011**

Twenty horses died in as many months at Hastings Racecourse in Vancouver due mainly to bone fractures, according to provincial documents released through FOI. Thirteen horses were euthanized after leg, shoulder or pelvis fractures, the documents show. Other deaths related to medical problems such as pulmonary edema and hemorrhage, perforated intestinal ulcers, foot infections and brain disease. The documents detail necropsy results from the provincial Animal Health Centre in Abbotsford on horses between Jan. 1, 2010, and Sept. 13, 2011. Peter Fricker of the Vancouver Humane Society urged the public to think twice before supporting any event - horse racing or otherwise - that subjects animals to undue risk or stress.

[20]

***Biologist mauled for grizzly critique: Environment Ministry employee suspended two weeks for negative report on provincial policies*. By Malcom Curtis, *Victoria Times-Colonist,* April 13, 2000.**

An Environment Ministry biologist claims B.C.'s grizzly bear population is dropping due to over-hunting and poor government management. But for his candor he was suspended for two weeks after circulating a report that criticizes provincial policies. Dionys de Leeuw, in a report distributed to other government scientists, said the government has catered to a small group of

hunters by increasing the "allowable kill" of bears to up to 1,300 annually in the early 1990s from 300 a year in the early 1970s. "Clearly grizzly bears, as individuals and as a population have suffered the consequences of this overkill," the Terrace-based biologist wrote. The report was obtained by the Sierra Club of B.C. under FOI.

[21]

***Freeze on dialysis money 'will mean some die.'* By Barbara McLintock, *The Province* (Vancouver), June 14, 2002**

Dozens of British Columbians who suffer from kidney disease will die unnecessarily if the government insists on its funding freeze for dialysis, according to government documents. "If no growth monies are available, then DEATH, in patients who would otherwise live, would be the impact," writes the B.C. Renal Agency in its submission to the Provincial Health Authority. The documents were obtained by the Hospital Employees Union under FOI. The agency says it's impossible for it to freeze the budget because of the rapid increase in the number of patients whose lives can be saved only through the use of dialysis. HEU secretary-business manager Chris Allnutt said the government should have released the report for public discussion.

[22]

***Food exceeds bacterial limits*. By Larry Pynn. *Vancouver Sun*, Aug. 23, 2003**

Almost 80 per cent of raw-food samples and 30 per cent of cooked- food samples analyzed by the B.C. Centre for Disease Control last year exceeded bacterial health guidelines. Information supplied to *The Vancouver Sun* after a FOI request reveals that 78.8 per cent of 33 samples of "raw ready-to-eat" foods tested by the disease-control lab -- vegetables, sprouts, salads, and sushi -- failed to meet federal health guidelines for at least one of four bacteria types. Of 555 samples of "cooked ready-to-eat" foods tested, 30.6 per cent failed one or more bacteria types. The random tests in food establishments, including restaurants and delis, covered a wide range of foods, but mainly meats, poultry, dairy products, salads, sandwiches, baked goods, Chinese and ethnic foods.

[23]

***Liberals were warned HST would hurt economy; Documents reveal top Victoria bureaucrats discussed new tax as early as March 2009.* By Jonathan Fowlie, *Vancouver Sun,* Sept. 2, 2010**

The B.C. Liberal government pushed ahead with the harmonized sales tax despite warnings from high-level officials that it could lead to at least five years of increased unemployment, lower wages and depressed productivity. "While the long-term economic gain [of the HST] is relatively clear, harmonization will cause a short-term loss in GDP and unemployment," says a briefing note prepared by the top official in B.C.'s tax policy branch for Finance Minister Colin Hansen. The revelation came in documents obtained under the Freedom of Information Act.

[24]

***Liberals' ears burning over 'fire sale' of land*. By Michael Smyth, *The Province* (Vancouver), April 16, 2015**

In the Lower Mainland's red hot real-estate market, it's not uncommon for a seller to get the asking price on a property - and sometimes more. That's why the NDP Opposition wants to know why the Liberal government sold several parcels of Crown land in Coquitlam for 33 per cent under their appraised value. Freedom-of-information documents show the land had been independently appraised at $128 million. But the government sold it for just $85 million. That's $43 million less than the appraised value. And look who the buyer was: Wesbild Holdings Ltd. The company and its director, developer Hassan Khosrowshahi, are generous donors to the Liberal party.

[25]

***Interest, small payments up Tourism debt*. By Rob Shaw, *Victoria Times Colonist,* Oct. 9, 2013**

Five years after starting to pay off its share of the Vancouver Convention Centre, Tourism Vancouver is $19 million deeper in debt than when it started, new documents show. The tourism agency began in 2008 to pay $89 million it owed the province for its share of the $883.2-million Vancouver Convention and Exhibition Centre expansion project on the city's downtown waterfront. But the repayment amounts were so low they were outpaced by the government's interest rate, and so the tourism agency has slid deeper into debt, according to an FOI request. The agency's total debt ballooned to approximately $108.4 million in July 2013, the government wrote in an Oct. 4 response letter obtained by the *Times Colonist*.

[26]

***Delay of Skeena sale costly for taxpayers*. By Steve Mertl, *Canadian Press,* April 11, 2002**

The B.C. government could have sold ailing forest company Skeena Cellulose Inc. back to the private sector in 1999 for more than 16 times what it eventually got for it, but rejected the deal because there were strings attached. And because it took another three years to unload the troubled company, B.C. taxpayers appear to have coughed up an extra $100 million to prop up the company, documents obtained by The Canadian Press via FOI indicate. The government finally sold Skeena in a deal that wraps up for $6 million.

[27]

***Final bill for fast ferries may reach $400 million*. By Craig McInnis, *Vancouver Sun*, Jan. 23, 1999**

The cost of B.C.'s new fast ferries could exceed $400 million by the time all the bills are in, according to figures released by the new president of the provincial ferry corporation, by FOI.

Philip Halkett revealed that B.C. Ferries has already exceeded by $5 million the $230-million spending cap set by the provincial Treasury Board for the entire project…. The first board of B.C.'s fast-ferry project harboured profound doubts about the deal, virtually from the day it was set up. But the minutes from BC Ferries board meetings (via FOI) show that the board was let go by the government only a few months after being put in place. And after that, the tough questions stopped for more than 18 months. (In the end, it took $450 million to build three ships, but they were sold off for $19 million.)

[28]

***Public land bought with $210.9M taxpayer loan; Under terms of 2008 mortgage for Little Mountain interest doesn't accrue until 2026*. By Dan Fumano, *The Province* (Vancouver), Sept. 1, 2021**

Thirteen years after the B.C. government sold the Little Mountain social housing property to a private developer, new revelations about the controversial deal prompted more public outrage. The full sales agreement for the six-hectare Vancouver site was made public for the first time, revealing that in 2008, the B.C. Liberal government gave the property's buyer, Holborn Properties, a $210.9-million mortgage but it will not begin accruing interest until 2026. "Where'd they get that money? The got it from us, the people of British Columbia. B.C. Housing provided the mortgage ... 18 years, no interest payments," said David Chudnovsky, the retired NDP MLA who obtained the sales contract through a 3½-year FOI process. Holborn, a Vancouver-based development firm owned by one of Malaysia's wealthiest families, opposed Chudnovsky's access attempts for years, but abandoned that effort last week. Holborn initially pledged to build 234 units of social housing, but only 53 of the promised units have been built so far.

[29]

***Whale gamblers also bet on B.C. real estate; 'High-risk' VIPs may have used winnings to invest in properties, documents suggest.* By Sam Cooper, *Vancouver Sun,* Sept. 30, 2017**

Paul King Jin, the alleged suspect at the centre of a major RCMP probe into money laundering and underground banking, is connected in big B.C. real estate loans to "high-risk" VIP gamblers from China, a Postmedia investigation shows. The RCMP's investigation, dubbed E-Pirate, alleges that Jin and his associates used an illegal cash exchange business in Richmond to lend suspected drug dealer cash to high-roller gamblers who, with troubling ease, used massive wads of small bills to buy chips in B.C. casinos. These ultrawealthy Chinese "whale" gamblers who were recruited in Macau casinos, could pay back these loans in China, thus ending up with cash in Canada while avoiding China's tight capital-export controls. BCLC documents, obtained by Postmedia through FOI, allege that 36 VIP gamblers, mostly from China, were linked to massive cash drops from Jin's network.

[30]

***Cash, cars and computers: How B.C. confiscates millions without showing evidence of crime*. By Bethany Lindsay, *CBC BC*, June 24, 2019**

Data obtained through a FOI request shows the province made 913 administrative forfeiture claims last year, amounting to $3.36 million in cash, 288 vehicles, 501 cellphones, 56 computers and a slew of other items including electronics, jewelry and a Wayne Gretzky rookie card. These administrative claims account for a whopping 80 per cent of B.C.'s civil forfeiture files, according to the Civil Forfeiture Office. That statistic was shocking, but not surprising to Micheal Vonn, policy director of the B.C. Civil Liberties Association. "It is simply an unjustifiable system," she told CBC. "You wouldn't be in support of citizens who have no moral culpability [being] swept into a program to provide cash to the government on the basis of a system in which it doesn't make any sense for them even to attempt to defend themselves," Vonn said.

[31]

***10-year analysis shows convictions in less than three percent of sexual assaults reported to Vancouver police.* By Staff, *Global News,* Aug. 16, 2016**

Only a small fraction of sexual assaults that occur in Vancouver are ever reported to police. And of those that are, only a similarly small percentage are ever resolved with a conviction. That's the depressing picture made crystal clear in a story by Global News. From 2005 to 2015, there were 5,231 sexual assaults reported to the Vancouver Police Department, according to documents obtained by the news network via a freedom-of-information request. Over the same 10-year period, police brought charges forward in 1,022 cases of sexual assault. There were only 156 eventual convictions, or 2.98 percent of cases taken to police.

[32]

***Clark met with Chinese developers while housing prices skyrocketed*. By Sam Cooper, *Vancouver Sun*, Nov. 14, 2017**

In 2015, as home prices skyrocketed in Vancouver, then-premier Christy Clark and then-trade minister Teresa Wat held intimate meetings with Hong Kong developers and donors who had billions invested in Vancouver property. They wanted to know if Clark's government would intervene in the market to reduce prices, documents obtained by Postmedia News show. The internal Ministry of Trade documents, released through a FOI request, for the first time reveal some of the courting strategies employed by Clark and Wat for trade meetings with real estate tycoons and corporations in China and Hong Kong. The 477 pages of notes highlight a "master narrative" about the significant place of foreign investment in Vancouver real estate, which differs from the government's public stance in 2015.

[33]

***Justice, lies and videotape*. By Leonard Cunningham and Jason Lee, *Vancouver Courier*, Feb. 2, 2003**

Documents obtained through FOI reveal that from 1992 to 1996, the city paid out more than $310,000 in claims resulting from alleged excessive force during arrest and false arrest. From 1997 to 2001, that figure jumped to more than $510,000. For lawyer John Richardson, a member of PIVOT legal society, the Stanley Park beatings are "just the tip of the iceberg." This past October, PIVOT, an organization of lawyers and activists, released a scathing report on VPD police practices. Over a nine-month period, it collected affidavits from more than 50 individuals from the Downtown Eastside alleging police use of torture, unreasonable use of force and unlawful detention.

[34]

***BC Rail sale was tainted, documents suggest*. By Scott Simpson, Lori Culbert and Jim Beatty, *Vancouver Sun*, March 3, 2004**

The British Columbia government was accused last November by Canadian Pacific Railway of leaking confidential competitive information to a rival railway during a fierce bidding war for ownership of BC Rail, *The Sun* has learned. A letter obtained from Premier Gordon Campbell's office through FOI shows CPR officials feared the government's handling of the BC Rail sale was "extremely prejudiced" and would lead to higher prices for shippers in the BC Rail service area. That document, which suggests the $1-billion sale of BC Rail may be tainted by influence-peddling, fraud and corruption, is a five-page summary of the police investigation into breach-of-trust allegations and seven searches on Dec. 28 at the B.C. legislature and the offices of people with ties to the provincial or federal Liberals.

[35]

***New rules would end most police chases*. By Rob Shaw, *Victoria Times Colonist*, April 8, 2007**

New, more restrictive rules for police pursuits in Victoria could reduce the number of high-speed chases by up to 90 per cent, the *Times Colonist* has learned. Only nine per cent of chases in Victoria in the past six years – about seven of 82 cases - were started for what could be defined as "serious" criminal offences. Those included breaking and entering, robbery, armed carjacking, erratic driving that forced an officer to fire his gun at the driver, two hit and runs, and a suicidal driver. The data from 2001 to 2005 were obtained by this paper under FOI. The Victoria Police Department's new guidelines, restricting chases to the most serious offences, are expected to be unveiled later this month. Chief Paul Battershill said he's aware that by changing the rules, Victoria will eliminate the vast majority of its chases.

[36]

***Governments short-change crime victims. Ministry retroactively deposits accrued interest back to account.* By Rebecca Aldous, *Victoria News*, March 29, 2009**

More than $7 million in provincial funds targeted for victims of crimes was diverted from its intended use, according to FOI documents obtained by Black Press. E-mails between the Ministry of Public Safety and Solicitor General and the Ministry of Finance show that interest from the Victims of Crime Act special account, which funds victim services programs and promotes equal access to victim services throughout B.C., was added to general revenue. The account's interest and any other income must remain within it, according to the act. "(The provincial government) has been taking money from victims," NDP public safety critic Mike Farnworth said.

[37]

***Videos show fare scofflaws being shocked by Tasers.* By Darah Hansen. *Vancouver Sun, CBC,* March 6, 2010**

Surveillance video documenting nine out of 10 incidents where a Taser was deployed against "non-compliant" transit passengers was made public by the region's transit police authority, a year after an FOI request was filed by CBC/Radio Canada. The footage was taken between 2007 and 2008. Captured by both Taser-mounted video cameras and station surveillance cameras, the black-and-white images are grainy and, in some cases, too blurry to make out what is happening. Transit police had earlier released written details of the incidents, including four cases where passengers were hit with the electro-shock device while being investigated for possible fare evasion.

[38]

***B.C. minister fears money laundering involves billions of dollars, cites reports*. By Staff, *Vancouver Sun,* Jan. 18, 2019**

Documents that say money laundering in British Columbia now reaches into the billions of dollars are startling to the province's attorney general who says the figures have finally drawn the attention of the federal government. David Eby said he's shocked and frustrated because the higher dollar estimates appear to have been known by Ottawa and the RCMP, but weren't provided to the B.C. government. Confidential provincial government documents dated April 2017 and released through Freedom of Information requests show the government was tracking suspicious currency transactions at B.C. casinos, especially in $20 bills, for years.

[39]

***Province accused of diluting jail report; Union points to deleted portions of draft document on violence behind bars*. By Kim Bolan, *Vancouver Sun*, Dec. 2, 2015**

The union representing B.C.'s corrections officers wants to know what the government is hiding in a heavily censored report on prison violence in the province. The B.C. Government and Service Employees Union has appealed to the B.C. Information Commissioner after getting a copy of a report by Liberal MLA Laurie Throness with large sections blanked out. The document

is a first draft of Throness' report on escalating violence in B.C. jails. His final report was made public in December 2014. The BCGEU says it was initially told there was no draft version, but got the document on Nov. 20 after an FOI request. The draft contains some strong language about violence in nine B.C. provincial jails that is missing from the final version.

[40]

***Rogue mail: B.C. companies rake in big profits selling lotto tickets in the States*. By Ann Rees, Wendy McLellan, *The Province* (Vancouver), June 25, 1995**

Law-enforcement agencies on both sides of the international border are investigating B.C.-based lottery-marketing companies suspected of ripping off elderly Americans. The companies net more than $120 million US a year by sending foreign lottery-ticket promotions through the U.S. mail. U.S. officials say that's illegal under their laws and have asked B.C. to help stop the practice. So far, B.C. has failed to shut the companies down. Briefing notes to the B.C. attorney-general's ministry, obtained through FOI, show it was made aware of substantial illegal activity two years ago. At a 1993 meeting in Seattle, U.S. officials told the Canadians they had seized 50 tons of illegal mail to that point. The Americans raised the possibility that Canadian officials could face U.S. charges if they continued to allow B.C. lottery tickets to be resold into the U.S. B.C. banned the resale of B.C. Lotto tickets a month later.

[41]

***Children left in cars at casinos*. By Chad Skelton, *Vancouver Sun*, July 11, 2006**

More than 40 people have been banned from B.C. casinos over the past three years for leaving their children alone in the car while they go inside, according to B.C. Lottery Corp. internal records obtained by *The Sun*. Coquitlam RCMP has responded to several such incidents at that city's casino and a spokeswoman said officers have found children as young as three left alone in cars. While most children are found during the day, BCLC said a few have been discovered as late as 3 a.m. at some of the province's 24-hour casinos - left there by both parents and grandparents. In response to a FOI request, BCLC provided The Sun with a list of recent barrings at its casinos.

[42]

***Suspected money laundering at B.C. casinos under-reported, CBC probe reveals*. By Curt Petrovich, *CBC News*, May 21, 2008**

CBC News learned the B.C. Lottery Corp. underreported suspected money laundering at the province's casinos for years. Documents show casino workers routinely observe dozens of suspicious financial transactions each year, but only a fraction are reported to the federal agency that tracks money laundering. Players can feed thousands of dollars in $20 bills into slot machines and cash out after playing only once or twice, walking away with a casino cheque for the remaining amount. By law, BCLC must file reports of all incidents of suspected money

laundering with the Financial Transactions and Reports Analysis Centre of Canada, or FINTRAC, the federal agency that tracks the crime. The federal agency has asked the province to investigate.

[43]

***Illegal gaming unit closed in 2009 due to BCLC 'funding pressure'; IIGET believed organized crime might influence regulated casinos*. By Sam Cooper, *Vancouver Sun*, Oct. 24, 2017**

B.C.'s illegal gambling task force was shut down in 2009 due to urgent "funding pressure" on the B.C. Lottery Corp., according to a confidential B.C. government memo. The March 2016 memo for the finance minister is the first known document indicating the illegal gambling task force was disbanded by B.C. officials for financial reasons. It also suggests, in the aftermath of the unit's closure, organized crime has been able to increase its dangerous reach into both legal and illegal casinos, for the purposes of money laundering. These outcomes mirror the concerns IIGET warned of in its 2009 threat report for the B.C. officials that governed it. That report, obtained by Postmedia News by FOI, cryptically noted: "A conflict of interest or perception of corruption undermines the integrity of gaming in B.C. and so this is a very important part of the report."

[44]

***B.C. gaming investigators repeatedly warned bosses of 'horrendous' money laundering.* By Eric Rankin, *CBC BC*, Jan. 11, 2019**

When former RCMP deputy commissioner Peter German brought down his Dirty Money report, he guessed the amount of suspicious cash laundered through B.C. casinos "exceeded $100 million" over approximately seven years. Now, secret internal reports obtained by CBC News through FOI show the dollar figure is at least seven times higher: more than $700 million between 2010 and 2017. And the co-author of the confidential reports - who was one of the province's top gaming investigators - believes the actual figure is $1 billion. "I crunched the numbers and added them all up," said Joe Schalk, former senior director of investigations with the province's Gaming Policy Enforcement Branch. Shortly after warning of a "massive escalation" of suspected dirty money flowing virtually unimpeded into B.C. casinos, Schalk and his boss were fired in 2014. Schalk says "at times we were even told we should not be talking about money laundering."

[45]

***B.C. to probe lotto corp.: Report of retailers winning sparks ombudsman's inquiry.* By Chad Skelton, *Vancouver Sun*, Dec. 19, 2006**

B.C.'s ombudsman has launched an investigation into the B.C. Lottery Corp. after revelations by *The Vancouver Sun* that lottery retailers win prizes at several times the rate of the general public. On Dec. 13 *The Sun* reported that over the past six years, those who sell lottery tickets have won

4.4 per cent of all lottery prizes over $10,000 -- a rate anywhere from three to six times their share of the population. The figures, obtained through a Freedom of Information request, raised fears that retailers may be stealing customers' winning tickets.

[46]

***'Damn near extinction': Population of B.C. steelhead on verge of collapse*. Glena Luymes, *Vancouver Sun*, Oct. 18, 2021**

A decades-long slide in Interior steelhead populations could escalate this year with only 58 fish expected to spawn in the Thompson watershed. Ottawa has declined to pursue an emergency listing of the Interior steelhead as endangered under the Species at Risk Act, citing the adverse impact of widespread fishery closures on First Nations, recreational and commercial fisheries. Instead, Ottawa said it would collaborate with B.C. on a steelhead recovery plan. But while the research was peer-reviewed by the Canadian Science Advisory Secretariat, it was never released publicly. In producing a Scientific Advisory Report to inform government decision-making, Fisheries and Oceans altered key points in order to support "status quo commercial salmon harvesting," according to provincial government officials, whose comments were found in 1,600 pages of documents obtained by the B.C. Wildlife Federation through FOI requests.

[47]

***B.C. funding caribou extinction through fossil fuel subsidies and tax breaks: study.* By Matt Simmons, *Canadian Press*, Oct. 1, 2021**

The connection between caribou and money goes deeper than the iconic creature's depiction on Canada's 25-cent coin; the B.C. government is funding the extinction of endangered caribou through fossil fuel subsidies, according to a University of British Columbia study published. "B.C. has committed a lot of money, a lot of resources and talks a lot about the priority of caribou habitat restoration, but on the other hand is actively subsidizing an industry that is encouraging caribou declines in the very area that B.C. wants to protect," Adriana Di Silvestro, one of the lead authors of the study, told The Narwhal. The study collated data from records obtained from publicly available sources or through FOI requests. There are more than 3,000 active oil and gas wells in federally designated critical caribou habitat and more than half of those are operated by companies that received credits and subsidies in the past three years, said the study.

[48]

***Court-ordered fines going unpaid in B.C., report says*. By Larry Pynn, *Vancouver Sun*, July 20, 2012**

About 40 per cent of court-ordered environmental fines in B.C. are going unpaid, West Coast Environmental Law revealed. The organization used FOI to obtain a copy of Closing the Gap, an Ministry of Environment report of 2010 on the payment of environmental fines. It shows that the

average payment rate for fines on violation tickets between 2003 and 2008 was 80 per cent, compared with an average payment rate of 59 per cent for fines imposed through court convictions. Lower value court fines tend to be paid, but higher fines, most often given to corporations, are unpaid - 83 violators collectively owed $700,000 in outstanding court fines. About 70 per cent of fines handed out specifically under the Environmental Management Act and its predecessor, the Waste Management Act, went unpaid, according to WCEL.

[49]

***Imported eggs spell danger for local fish.* By Greg Middleton, *The Province* (Vancouver), May 18, 1997**

Opponents of fish farming fear that B.C. is risking its wild salmon by continuing to allow the import of Atlantic salmon eggs that may be diseased. The provincial and federal governments have known about the risk for years, says David Narver, the former director of the provincial fisheries branch. Narver, who warned the federal fisheries department of the risks of imported eggs in a 1993 letter, said in the letter that the risk remains no matter how vigilant the fisheries department is. Fisheries consultant David Ellis, who helps natives develop fisheries, got a copy of the letter under FOI. Anti-fish-farming lobbyists such as Alexandra Morton believe diseases brought in with Atlantic salmon eggs are already killing wild salmon.

[50]

***Oil, climate change threaten food supply: B.C. report*. By Randy Shore, *Vancouver Sun*, April 2, 2007**

Climate change and rising oil prices are a threat to B.C.'s ability to feed itself in the future, scientists and planners say. B.C. farmers produce only 48 per cent of the meat, dairy, fruit and vegetables that we consume, according to a report prepared by the B.C. Ministry of Agriculture. The report, titled B.C.'s Food Self-Reliance, says that the area of farmland with access to irrigation in B.C. would have to increase by nearly 50 per cent by 2025 to provide a healthy diet for all British Columbians. Maintaining our current level of food self-reliance in 2025 would require a 30-per-cent increase in agricultural production, it says.

[51]

***Victoria let fish farms off the hook for hundreds of thousands of dollars.* By Jeff Lee, *Vancouver Sun*, Feb. 5, 2004**

The provincial government refunded more than $425,000 in fines and forgave hundreds of thousands of dollars in unpaid penalties assessed against salmon farmers for illegally expanding their operations. The decision was made in 2001, just six months after the Liberals swept into power, according to documents obtained through FOI by the Sierra Legal Defence Fund. Sierra says the refunds, including more than $175,000 to Stolt Sea Farms, one of the largest salmon farming companies in B.C., was done without ministerial or cabinet approval or Treasury Board

scrutiny. The decision was a reversal of a long-standing policy of British Columbia Assets and Land Corp. to charge two times the rent against people who trespass on Crown land.

[52]

***B.C.'s directive to scientists under fire. Teams writing recovery strategies for endangered species told not to identify critical habitat, groups learn,* By Mark Hume, *Globe and Mail,* Dec. 6, 2007**

Two environmental groups are calling for a federal investigation after obtaining documents that show the B.C. government is telling science teams that are writing recovery strategies for endangered species not to identify critical habitat. "This shows how politics trumps science," Gwen Barlee, a director of the Western Canada Wilderness Committee, said. She added the B.C. government doesn't want to identify critical habitat because once it does, it will have to take steps to protect land, possibly curtailing logging or other development. Barlee's office and Ecojustice made FOI requests to obtain draft B.C. guidelines that indicate how recovery plans for endangered species should be structured.

[53]

***No, thank you; Fish farms turn tail on tissue sample reporting*. By Serena Black, *Prince George Citizen,* Aug. 11, 2010**

B.C.'s salmon farm industry has decided not to participate in reporting tissue samples to the provincial government for fish health and sea lice monitoring audits. "Instead of creating and enforcing strict regulations, the government allowed numerous rules to be voluntary measures so salmon farms didn't have to report anything if they didn't want to," said David Lane, executive director at T. Buck Suzuki. Lane also said the association's refusal to provide data has convenient timing. In 2003, Lane took the ministry to court over an FOI request regarding the release of disease and sea lice infestation data. The ministry lost what turned into a six year battle, and Lane was given the information for 2002-03.

[54]

***Mount Polley Disaster Brought Quick Government PR Response, Documents Show. Three-year-old FOI request reveals early belief laws broken and co-ordination with mine owner.* By Jeremy Nuttall, *The Tyee*. June 14, 2017**

In the hours after the 2014 Mount Polley mine disaster, authorities were already concerned laws had been broken and the premier’s office was worried fallout from the tailing pond breach would “get in the way” of other planned mines, documents provided to The Tyee reveal. Almost three years after the disaster, and weeks away from a deadline to lay charges under B.C.’s environment act, no charges have been laid and no fines levied. The government’s initial reaction to the dam’s collapse is revealed in hundreds of pages of emails and other communications obtained through a FOI request and provided to The Tyee by Jessica Ross, an independent researcher.

[55]

***B.C. releases documents revealing hunting culture among conservation officers*. By Larry Pynn, *Vancouver Sun*, Jan. 29, 2018**

After repeatedly denying the existence of such documents, the B.C. government has finally complied with a FOI request revealing a strong hunting culture within the conservation officer service. The person who successfully navigated the bureaucracy where others couldn't and who refused to take no for an answer is Bryce Casavant, the former conservation officer who gained international attention and support when he refused a superior's order to kill two young bear cubs on Vancouver Island in 2015. The documents reveal that 75 of 106 mainly uniform and patrol officers have hunting records and that 48 specifically purchased hunting licences last year. Four officers unsuccessfully applied for limited-entry grizzly bear hunts, which have since been banned by the NDP government except for First Nations for food, social and ceremonial purposes.

[56]

***School fees rejected by top court*. By Staff, *Prince George Citizen*, Oct. 3, 2006**

British Columbia schools can no longer charge parents extra fees for things like music instrument rentals, home economics class materials and shop-class supplies, a B.C. Supreme Court has ruled. The ruling means school boards and the B.C. Ministry of Education will have to fully fund those activities, John Young, the Victoria school trustee who launched the court challenge, said. Young used school fee schedules from 15 B.C. school districts as evidence in court. With information obtained via FOI, he noted schools are charging hundreds of dollars to students. One school in suburban Victoria is charging students $1,100 to participate in an athletic program. Young said he met a woman who said she was paying $700 to keep her three high-school-aged children in school.

[57]

***Audit uncovers cheats at hairdressing schools: Ex-convicts found out that enrolling in a stylists' course meant a quick buck.* By Chad Skelton, *Vancouver Sun*, July 21, 2000**

Faked attendance records. Tuition fees collected for students no longer attending classes. A system so lax that word circulated among penitentiary convicts that student loans were an easy way for released prisoners to scam money. Those were some of the findings of investigators with the ministry of advanced education, training and technology who launched audits into 70 career colleges in the province during the past three years. The Vancouver Sun obtained details of the audits through freedom of information legislation.

[58]

***School newspapers win access to contracts with Coca-Cola: Details of deals must be released to public, privacy commissioner rules*. By Sarah Galashan, *Vancouver Sun*, May 29, 2001**

Exclusive deals signed between Coca-Cola and two post-secondary institutions in Vancouver are public documents, according to the B.C. information and privacy commissioner. The decision marks a milestone in a five year legal battle between student journalists and administrators at the University of British Columbia and Capilano College where only Coca-Cola products can be sold. In exchange for the exclusive rights to sell and advertise to a campus market, the beverage company paid both schools an undisclosed amount. Andrew Epstein, the lawyer who represented the two student newspapers, The Ubyssey and The Capilano Courier, during the long arguments under the FOI Act, calls the decision precedent setting. "So far as I know this was the first of its kind in Canada," he said.

[59]

***UBC course enrolments manipulated*. By Sarah Schmidt, *Vancouver Sun*, Jan. 31, 2004**

Senior administrators at the University of British Columbia embarked on a deliberate campaign to manipulate course enrolments to improve the school's standing in the influential Maclean's university ranking, internal documents show. And they did so despite repeated warnings from professors that the moves had either no effect on the learning environment or could actually hurt students. The correspondence, obtained under FOI, details an eight-month effort to limit enrolment in courses for the purpose of improving UBC's fifth-place finish in 2002's university ranking. It included suggestions to deceive students about room capacity and deny them the opportunity to major in a discipline. The effort also raised concerns about preventing students from graduating on time.

[60]

***Contract binds Vancouver to play by IOC rules or not play at all.* By Daphne Bramham, *Vancouver Sun*, Aug, 7, 2009**

It's easy to understand why the International Olympic Committee would want any disputes with host cities decided by its own "court," so that it is beyond the grasp of courts in countries whose judicial systems are dodgy. But why on earth did Vancouver's mayor Larry Campbell sign the host city contract governed by Swiss law? Signing off Vancouver's right to access Canadian courts in the event of a dispute with the IOC is just one of the troubling pieces of the contract signed in 2003 and obtained by the B.C. Civil Liberties Association under B.C.'s FOI law. The contract's preamble declares that the IOC is "the supreme authority of and leads the Olympic movement." There is no mention in the contract of human rights or the Canadian Charter of Rights and Freedoms.

[61]

***Fire prevention key amid climate-change dangers: internal gov't document*. By Lindsay Bethany and Larry Pynn, *Vancouver Sun*, Dec. 5, 2014**

As the planet heats up and the risk of "mega fires" rises, B.C. will no longer be able to lean on its world-class wildfire-fighting teams to keep people and property safe, according to a draft provincial document, obtained through FOI. The Forests Ministry paper, called Climate Change Adaption Action Plan for Wildfire Management 2014-2024, suggests fire prevention should become the top priority of the province. It says the average temperature in B.C. is predicted to rise by four degrees by 2080. That warming trend, combined with the higher rate of wildfire spread in forests affected by the mountain pine beetle, means that "mega fires" will be increasingly common.

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***Energy hikes hit poor the hardest; 'Energy poverty' means people can't afford to upgrade their homes.* By Scott Simpson, *Vancouver Sun*, June 25, 2008**

Rising energy costs are hitting a quarter-million low income families three times as hard as other British Columbians, according to a report done for the B.C. government. It calculates that about 18 per cent of B.C. residents are living in "energy poverty," forcing them to spend about 17 per cent of total after-tax income on heat, light and fuel. Those better-off spend about five per cent on energy. The report was obtained by the B.C. Old Age Pensioners' Organization via FOI, and has been posted on the website of the B.C. Utilities Commission as part of a hearing on proposed BC Hydro rate increases.

[63]

***Budget Rent a Car 'may have' engaged in deceptive acts: consumer watchdog*. By Staff, *CBC BC*, March 2, 2016**

A CBC Go Public investigation into Budget Rent a Car has resulted in a Consumer Protection B.C. probe which found the rental agency charged customers for damage to vehicles which occurred either before or after their rentals. As a result, the company has promised not to charge customers for damage they don't sign off on at the end of a rental unless the car is dropped off after business hours or the consumer doesn't wait for the completion of the inspection. The CBC has obtained a supplemental report on the Consumer Protection probe through FOI. It reveals that Budget B.C. made a number of changes to its policies and procedures after the CBC story.

[64]

***Berry pickers worse off, says union report*. By Staff, *Surrey North Delta Leader*, Sept. 29, 2004**

Conditions for farmworkers have worsened because the provincial government has cut back inspections and lowered standards, says a report prepared by the B.C. Federation of Labour. However, a senior government manager disputes the findings. The study says information obtained under FOI requests reveals inspectors have found children as young as 12 years old working in the fields, that some berry pickers are shorted on hourly wages, that some farmers are using inaccurate scales to weigh berry pickers' buckets, and many other abuses. It condemns a B.C. government decision to reduce inspections during peak picking times "in response to concerns by farmers and labour contractors about disruptions to the harvest," according to a 2002 memo from the agriculture and labour ministers.

[65]

***Forests ministry knew of conditions in squalid camps; workers not yet paid*. By Aaron Orlando, *Revelstoke Times Review*, July 21, 2011**

A group of tree planters have not yet been paid a full year after they were found living in squalid conditions in a forestry camp near Golden, B.C., despite the fact that they've won labour decisions ordering they be paid. B.C. Public Interest Advocacy Centre lawyer Ros Salvador found internal government communications through an FOI request. The emails were exchanged in 2010 between ministry of forests managers, B.C. Timber Sales staff and health authority officials. An environmental health officer with Vancouver Coastal Health and an RCMP officer investigated the camp and found the uncomfortable, cold and hungry workers sleeping in a "boxcar on wheels" without proper ventilation. They used a single outhouse, had no showers and were cleaning themselves using cups of water. The RCMP officer felt the condition of the camp warranted follow-up with his supervisors for possible criminal charges. Similar conditions at the Golden camp sparked outrage across the country.

Appendix 4

The growing misuse of Section 13, policy advice

Each year, public servants in B.C. send hundreds of subject-expert “briefing notes” to ministers on a vast array of topics, a very important resource for the public interest. But these are becoming more difficult for the public and press to obtain. Sample 1 shows a briefing note to the Minister of Advanced Education on *UBC Research Ethics* that was released in full to me under FOI in 2004, with not one line blanked out.

Contrast that to Sample 2, a briefing note to the same minister, entitled *Scan of Private Degree Granting in British Columbia,* released in 2012 under FOI. Most of this record is blanked out under Sec. 13, even background facts Under current practices, if the first briefing note of 2004 was FOI-requested today, most of it likely would have also been blanked out under Sec. 13, as the second sample was.

ADVICE TO MINISTER

CONFIDENTIAL ISSUES NOTE **Ministry:** Advanced Education **Date:** February 24, 2004 **Minister Responsible:** Hon. Shirley Bond	# UBC Research Ethics

KEY FACTS REGARDING THE ISSUE:

- 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 *"University of British Columbia broke rules for years, failing to warn patients of dangers".*
- 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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File Created:
File Updated:
File Location:

Minister's Office	Program Area	Deputy	Comm. Dir

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 2012. – 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

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.

Student Enrolment

s.13

Appendix 5

B.C. NDP Statements on Freedom of Information, 2006-2021

[1]

(From news story: *Dix, Farnworth pledge reforms to Freedom of Information Act; candidates commit to reducing fees, releasing more records and creating an open data portal on the Internet*. By Chad Skelton, *Vancouver Sun*, **Feb. 15, 2011)**

B.C. NDP leadership candidates Adrian Dix and Mike Farnworth both promise to make major changes to the province's Freedom of Information laws if elected premier, including reducing fees and narrowing the grounds on which government can withhold records. Dix and Farnworth both agreed the FOI law is in urgent need of reform. "Currently, the legislation remains too vague and open-ended, allowing the government to exploit this lack of clarity to avoid public disclosure whenever possible," Farnworth wrote.

Under the current law, government can withhold records considered "policy advice or recommendations," an exemption that has been applied to large volumes of records. Dix wrote the section should be amended to make it clear certain records should always be released, whether policy advice or not, such as scientific analyses and investigation reports.

Horgan wrote that he supported some changes to the Act, such as making university spinoff companies subject to FOI requests. But he was less enthusiastic about reforming the Act's policy-advice exemption, saying it had "stood the test of time."

[2]

Hansard, April 1, 2008

NDP MLA Adrian Dix (the current Heath Minister):

There's also a difference between an opposition party that introduced freedom-of-information and privacy laws in British Columbia and got them passed through the Legislature, and a government that on 16 occasions…. Sixteen changes they've made to make freedom-of-information requests more time-consuming and more difficult. That's a difference.

You know what? I say this to the government: You never think this when you're in government, but sometimes political parties are in government, and sometimes they're in opposition. It is dangerous for a government to act towards a fundamental law of our province, freedom of information, as if they're going to govern for a thousand years.

As the member for Columbia River–Revelstoke eloquently said: "This is beyond partisanship." One day we'll be over there, and they'll be making FOI requests. We should respond to those FOI requests, and we should respect the spirit of a law that says you should have access to that information.

Instead, what we have is a government that routinely uses the FOI Act and Section 13 in particular of that act to deny the public of British Columbia - MLAs, the media, citizens - the right to information they'd otherwise get.

[3]

Hansard, April 1, 2008

NDP MLA Mike Farnworth (the current Solicitor General):

That is a government obsessed by secrecy. That is a government afraid of the advice that it's been given. That is a government afraid to let the public know what is going on. The only positive thing in that is that I know my eyes are not getting any weaker. What it says is that this is a government that is far too secretive.

Whiteouts. In fact, I would not be surprised if the whiteout line in the budget has significantly increased since this government took power. I say that with some justification, because when you look at this government's record on freedom of information, you see a startling fact, and that is that they have made more than 16 changes to FOI to make it more time-consuming and more difficult.

More expensive for ordinary citizens, more expensive for small business, more expensive for non-governmental organizations, more expensive for the media, more expensive all around. Is it because there are financial considerations? Well, the act did make for what would be considered normal. No. "Excessive" is the word that people have used. "Almost usurious" are other words that have been used to describe the way in which this government has used financial costs to restrict the ability to access freedom of information.

Clearly, the actions of this government since they have taken office completely defeat the intent of freedom-of-information legislation. It's supposed to be sunshine legislation, to let the light of public scrutiny shine in. We know that they certainly appreciated it when they were in opposition. They loved it every day they were in opposition. But, by God, they sure couldn't wait to draw the curtains shut when they became government, and that's a shame.

[4]

Hansard, May 5, 2014

NDP MLA George Heyman (the current Environment Minister):

In this time when British Columbians and people across Canada are becoming more cynical about politics, more alienated from government, I think one of the tools we have at our disposal to reverse that unfortunate trend, to give people back some sense that we in this chamber and people in government are acting on their behalf, is to respect their right to information. . . .

I could go on, and the litany goes on, but the answer to this issue is to strengthen the act on the recommendations of the Information and Privacy Commissioner, which she has made on numerous occasions, both to allow greater access to information and to ensure documents are kept. We on this side of the House would, in fact, do that.

[5]

Hansard, May 16, 2016

NDP MLA Doug Routley:

The freedom-of-information law, introduced by the NDP government in 1992 and adopted unanimously by this House, is meant to be a regulatory backstop to a culture of transparency. Instead, we have seen a steady and deliberate undermining of freedom of information and, consequentially, democratic integrity.

The information of government belongs to the people of B.C. The information of what our government has done, how it was done and who decided is essential to a functioning, effective democracy. We have to see it to judge it. The FOI laws of the province have been weakened many times by government's amendments, and the provisions stretched to favour secrecy over openness.

As the transparency of government is blurred and blindfolded, the backstop of FOI law becomes the point of conflict. To repair the damage done to faith in government's integrity, we need to significantly toughen and expand FOI law. But more than that, we require the shift in culture that begins and ends in the Premier's office.

(Hansard, March 22, 2010)

When I try to describe to people which ministry I'm critic of, I often say, "Well, I'm critic of the ministry of secrecy, surveillance and propaganda," because the FOI Act has essentially become the secrecy act of government.

[6]

Hansard, May 26, 2008

NDP leader Carole James:

We've seen freedom-of-information laws ignored and disdained by this Premier. We see new bureaucracies created with no oversight, little public accountability.

[7]

Hansard, April 1, 2008

NDP MLA Norman Macdonald:

The billions of dollars that are spent of the people's money, the billions of dollars that government spends of your money…. How that money is spent is going to be fully scrutinized. The policies that the government has the abilities to put in place, that restrict our lives, that put boundaries around what we can do, are thoroughly, thoroughly challenged. . . . .

But we as the public, we as the opposition, need to know all that we can to do our job properly, and freedom-of-information legislation is an important part of that. If it errs, it needs to err to the side of openness.

[8]

Hansard, March 8, 2007

NDP MLA Guy Gentner:

Freedom of information helps to ensure that a government is operating with the informed consent of its citizens. That's what it's all about. Power is information, and without that information we are powerless.

Freedom of information exists for the purpose of making public institutions transparent and accountable to the public. When all else fails it is a citizen's best hope to pierce the veil of obstruction that so often hides the work of government and to find out what is really going on. I don't understand the reluctance of this government to open its arms and say to its populace: "We are willing to allow you to see what is really going on."

NDP MLA Maurine Karagianis:

I find it quite laughable, because if I didn't laugh, I would probably want to cry for the inability of this government to follow through on the promise of openness and accountability

Again, as part of government's endeavours to constrain the flow of information and to prevent people from clearly seeing and understanding the thread of activities that have taken place, it has become more and more difficult to even get information under the Freedom of Information and Protection of Privacy Act. Often documents have arrived back in my hands so severely severed as to actually be a waste of paper.

[9]

(From news story: *Key files hidden or destroyed, NDP says; B.C. government accused of flouting information law.* By Lindsay Kines, *Victoria Times-Colonist*, April 30, 2015)

The NDP accused the Liberals Wednesday of flouting B.C.'s FOI law by withholding or destroying important government records. For the second straight week, the Opposition produced documents that show one senior official denying the existence of records only to have another person release them.

NDP Leader John Horgan, whose party highlighted three similar cases last week, said the documents paint a disturbing picture of increasing government secrecy. "I think all British Columbians should be concerned when their government hides things from them," he said. "The whole point of having access to information is so we can all make reasonable judgments about the effectiveness or ineffectiveness of our political leadership."

[10]

Then-MP Murray Rankin - current B.C. NDP MLA and Minister for Indigenous Relations – writing on the *Access to Information Act*, the federal equivalent of B.C.'s *FOIPP Act.* From his preface to the book *Fallen Behind,* by Stanley Tromp, 1st edition, 2008:

Perhaps sadly, this book places Canada in the global context and demonstrates just how far behind other countries Canadians are in providing a meaningful right of access to their government's public records. Reading this book will no doubt make you angry: why do Canadians tolerate this state of affairs?

For legislation like the *ATIA*, which the courts have affirmed is quasi-constitutional in nature, its continuing vitality now hinges upon meaningful reform efforts. It is now time to squarely face the perennial issue of commitment: is there a political will and a bureaucratic willingness to live up to the quasi-constitutional rights now enshrined in the *ATIA*? Is there a similar will to amend the law now, as is urgently required, to make it responsive to some of the serious and pressing issues canvassed in this book? . . . . Without a meaningful right to information, our democracy atrophies.

[11]

Murray Rankin, QC, currently B.C. NDP MLA and Minister of Indigenous Relations. Keynote address, B.C. FIPA Information Summit, Sept. 29, 2006

Can we not find bipartisan support to restore our freedom of information?

Most important of all, it has so far failed to implement the very thoughtful recommendations of the special all-party committee of the Legislature chaired by Mr. Blair

Lekstrom. It has been over two years since the committee issued its unanimous recommendations. The silence from the government so far is deafening.

At the beginning of this new century, the right to information is now being regarded as the prerequisite for the exercise of other rights to democracy. . . . If [B.C. FOI] is as important as human rights, which the Court also found to be a quasi-constitutional right, how can we allow it to be treated that way?

[12]

Hansard, Oct. 17, 2011

NDP MLA Doug Routley (on *FOIPP Act* section 12, cabinet records):

There's a standing joke in government and in research circles that anything the government doesn't want to share with the public simply gets loaded onto a trolley and wheeled through the offices of the cabinet and thereby becomes a recommendation to cabinet and exempt. That's one area of the act that wasn't addressed in this amendment act that could have gone a long way to improving the openness of our democracy.

I am concerned - and others are - that section 12 is being used increasingly as an excuse for blanket withholding of information of government. As with section 13 that I'll talk about in a minute, this is now not only being used for specific cabinet documents but even for any information that might have gone into the creation of those documents.

On *FOIPP Act* Section 13 – the Policy Advice exemption

[13]

[Former NDP Attorney General Colin Gableman - who introduced the B.C. *FOIPP Act* in 1992 - in a speech to the 2007 BC Information Summit]

Section 13 was so clear and obvious that there was not a word spoken by any member of the House on it during the committee stage debate. Not a word! . . . . I have to tell you that the Appeal Court quite simply failed to understand our intention - the intention of the legislature – when using these words as we did…. A government which believes in freedom of information would have introduced amendments in the first session of the legislature after that Appeal Court decision to restore the Act's intention.

[14]

Murray Rankin, QC, currently B.C. Minister of Indigenous Relations. Keynote address, B.C. FIPA Information Summit, Sept. 29, 2006

I'm particularly concerned about the B.C. Court of Appeal's decision in the *College of Physicians and Surgeons* case (also known as the “Dr. Doe” case), where the policy advice or recommendations exemption in the *Act* was, in my view, extended remarkably and too far.

I do hope that the government agrees that this is a regressive development and, consistent with its recent re-affirmation of a commitment to open government, will amend the section to overcome the Court of Appeal’s overbroad reading of Section 13(1). It is now up to the government to ask the Legislature to change the *Act* and restore the original intent of the legislation and I hope the Opposition will be watching - I know all of us will - to ensure the government does not listen to its officials and try to duck this one.

[15]

Hansard, April 1, 2008

NDP MLA Mike Farnworth (the current Solicitor General):

Anyway, the Privacy Commissioner has called for an amendment to section 13 dealing with advice: "As it stands, the advice or recommendations exception I think unacceptably curtails the public right to know." He had a deep concern: "In this case, Bill 25, the predecessor of this bill, fails to address a serious imbalance that now exists between the public's right to know and government confidentiality. Not to amend section 13 would seriously undermine public accountability by allowing public bodies to possibly withhold broad swaths of information.

They just don't get it. An all-party committee went out and came back with recommendations. Those recommendations were thoughtful. They were bipartisan. They had the support of the public . . . . So what happens? It's ignored. . . . Minister, this is your last session. You said you're not running again. Take this opportunity. Seize this opportunity to put your stamp on one of the most important, fundamental pieces of legislation before us in this chamber.

[16]

Hansard, April 1, 2008

NDP MLA Katherine Conroy:

Most notably, the policy advice section, Section 13. I think it's the dreaded Section 13, as anybody who has requested a Freedom of Information Act would call it. It does not have the amendments that have been requested. This government has been caught abusing this section in order to hide politically damaging information. It has been proven again and again that the ministries are utilizing section 13 to not be open and accountable, to not provide information to people when they ask for it.

I think that we know that the government record on freedom of information has been, in fact, quite dismal. The act has been amended six times since 2001. It has led to less accountability each time, and 16 changes that have been made to the Freedom of Information Act have made the requests much more time-consuming and much more difficult.

Hansard, May 29, 2008

[K. Conroy presented a bill titled *Freedom of Information and Protection of Privacy Act Amendment Act, 2008*]

It gives me great pleasure today to be introducing a piece of legislation that amends the *Freedom of Information and Protection of Privacy Act* in order to restore public access to information. Amendments to section 13 narrow policy advice exceptions, preventing information from being withheld when it is not directly related to policy or when the relevant government decision has already been made, and restoring the purpose of this section to its original intent. *[The Bill did not pass.]*

[17]

NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), 2009

Q.3. Increasing use is being made of several "exceptions" in the FOIPP Act. In particular, section 12 (cabinet confidences) and section 13 (policy advice) are now used to block the release of factual or background information. What will your government do to limit or narrow the current exceptions or limit their use?

Reply: The Campbell government has improperly used multiple exemptions in order to restrict the public's access to government information. In particular, the B.C. Liberal government has expanded the meaning of "advice" in section 13 "Policy Advice", and their use of this section has lead to a widespread call for reform: the freedom-of-information commissioner, the B.C. Freedom of Information and Privacy Association, the Campaign for Open Government and an all-party committee chaired by a government member have all recommended that the section be fixed, but the Campbell government has refused to act.

Our private members bill returns the policy advice exemption to its original intent, preventing information from being withheld when it is not directly related to policy or when the relevant government decision has already been made.

[18]

NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), April 27, 2017 (https://fipa.bc.ca/wp-content/uploads/2018/01/BC-NDP-Response.pdf)

Q.3. Certain sections of FIPPA that exempt records from release, specifically cabinet confidences (s.12) and policy advice (s.13) have long been criticized as overly broad and in need of change. What specific changes, if any, would you make to those sections?

Reply: Anyone who has ever submitted a Freedom of Information request to the Christy Clark B.C. Liberals knows that more often than not, what they get back (if it's not a "No Records" response") is reams and reams of blank or heavily severed pages. The B.C. Liberals have used multiple exemptions in order to restrict the public's access to government information, and two key ones are Section 12 and 13.

The B.C. Liberals' use of section 13 to deny even factual information has led to widespread call for reform, including by the Information Commissioner, and we support the Commissioner's advice, reflected in the May 2016 report of the *Special Committee to Review the Freedom of Information Act*, that the meaning of this section should be restored to its original, pre-B.C. Liberal, intent.

We also support the position of the Information Commissioner regarding Section 12: the Commissioner has clearly stated that "the importance for our system of government of generally protecting the confidentiality of Cabinet proceedings and deliberations is beyond question" (https://www.oipc.bc.ca/special-reports/1274) but that this should not be applied as a blanket mandatory exemption, as the B.C. Liberals have done, but rather that "the government can maintain an appropriate and necessary level of confidentiality using a discretionary exception" exercised by Cabinet (https://www.oipc.bc.ca/special-reports/1935m)

On FOI-exempt subsidiary companies

[19]

Hansard, May 20, 2008

[NDP MLA Katherine Conroy presented a bill titled *Freedom of Information and Protection of Privacy Act Amendment Act, 2008*]

It gives me great pleasure today to be introducing a piece of legislation that amends the *Freedom of Information and Protection of Privacy Act* in order to restore public access to information. The amendments increase the scope of the act to include information from quasi-public bodies in order to preserve public access to information concerning bodies that are performing governmental functions.

As well, this act increases the transparency of government with regards to information available to the public. By expanding the scope of the Freedom of Information Act, enhancing the public interest paramount principle and limiting exemptions under section 13, as recommended by the Information and Privacy Commissioner, it restores a high standard for public access to information. Coupled with improvements in the time and cost involved, this act improves government accountability, transparency and openness. *[The Bill did not pass.]*

[20]

Hansard, May 18, 2016

NDP MLA Doug Routley:

The next question I would like to ask is related to the subsidiary corporations of public bodies. It's been a recommendation for some time from committees that subsidiary corporations - land development corporations subsidiary to universities, for example, and business corporations of school districts - essentially any subsidiary corporation controlled by government…. There are several different definitions of what that might be. A 50 percent plus one ownership stake in that corporation or the appointment of directors of the corporation by the government could qualify the corporation to come under the scope of FIPPA.

It's been a recommendation from a couple of commissioners, a couple of reports now. A previous minister from Prince George had agreed, when she was Education Minister, that that was an appropriate step and a gap in the legislation. Has the minister considered it? Will he be moving to bring subsidiaries under the scope?

Hon. Mike de Jong [Liberal minister for FOI policy]:

Short answer is yes. It is something that we are examining, that I am seized of . . . . So the idea, the notion of extending the umbrella more broadly, is something that I see wisdom in.

[21]

Hansard, March 7, 2007

NDP MLA Harry Lali:

When we talk about that, there are a number of bodies that come into play that are actually covered. B.C. Ferries, for instance, is one of them. The role of Maximus, the MSP premiums, is in there. Accenture, which is Hydro records and billings. And then you can also look at the Northern Development Initiative Trust, the Southern Interior Development Initiative Trust and the Vancouver Island development initiative trust. There are a number of bodies that are now put at arm's length. VANOC is another one, and a whole lot of P3s also come under the purview of this.

It's the taxpayers' money that these quasi-governmental, quasi-independent bodies spend. If there is only one taxpayer in this province, it's their money that is being spent. Yet there is absolutely no accountability. . . . they're spending literally billions and billions of dollars. Actually, there was an estimate that was done. It was $27 billion worth of projects that are being done as a result of all of this, and people don't have access to their own information.

So I'd like to ask the minister: how can she say that they are living up to the Premier's statement of being the most open, accountable and democratic government when clearly they are not? What is she willing to do to make sure that people can get access to their information from these quasi-independent, quasi-government bodies that I've mentioned?

[22]

Hansard, July 21, 2015

Meeting of the Special Committee to review the B.C. *FOIPP Act.*

NDP MLA and committee member David Eby (the current Attorney General):

We were provided a document that had a list of recommendations put forward by the 2010 committee and where we were at in terms of the implementation as a province. Recommendation No. 4 was: "Expand the definition of 'public body' in schedule 1 to include any corporation that is created or owned by a public body, including an educational body."

Now, I understand the history of this is that in 2005 Minister Shirley Bond issued a press release saying that school boards that owned entities would be subject to FOI. We got an update last week, this week. . . . saying that this was under consideration, that there were consultations that had been done, and there were implications that may have "unintended consequences."

I'm having trouble understanding how in 2005 the government could say that they were going to do this, and in 2015 we still don't have this in place.

(Committee Meeting, Nov. 18, 2015)

[NDP MLA David Eby speaking to the Government's Chief Information Officer]

Eby: In follow-up on this wholly-owned-subsidiary issue, I'm surprised that you're seeking advice from this committee about how to implement this. I note in the Privacy Commissioner's submission, she notes: "In June 2014 and October 2011, I wrote to the relevant ministers to ask that an amendment be drafted to FIPPA to ensure that these entities were all public bodies that were covered by FIPPA."

Since October 2011, or perhaps since June 2014, you haven't been able to figure out a way to get wholly-owned subsidiaries under the Freedom of Information Act, any way to draft legislation to bring them underneath? If you haven't, if that's the case, have you advised the commissioner of your difficulty around this and asked for suggestions about how to implement her recommendation?

It seems to me that this has been going on for a long time. This committee has heard from six or seven witnesses that this is a serious issue. We're going to hear from the commissioner, it seems, on it as well. I find it surprising that there are no records on this request.

B. Hughes: *I'm not sure I understand your last comment that there are no records.*

Eby: How can it be that since October 2011 this has been an issue - a huge issue for the public - in front of this committee for multiple years, yet this ministry has no idea about how to implement that recommendation and is, in fact, seeking recommendations from elected officials about how to do that?

[23]

NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), 2009

Q.2. Extending the FOI act to all public and quasi-public bodies - A number of multi-billion dollar entities are not covered by the FOIPP Act, including BC Ferries and VANOC. Will you extend the scope of the Act by covering the public and "quasi-public" bodies not currently covered?

Reply: We support expanding the scope of the *Act* to include information from quasi-public bodies in order to preserve public access to information concerning bodies that are performing governmental functions.

[24]

Q.4. In 2017, the Special Legislative Committee reviewing FIPPA repeated the recommendation from the 2010 Committee that subsidiaries created by educational public bodies like colleges and universities should be made subject to the Act. Will your government make this change and if not, why?

Reply: We support the *Act* being expanded to capture subsidiaries created by public bodies and will consult with affected organizations.

- NDP reply to FIPA, election campaign questionnaire, April 27, 2017

On "oral government" and duty to document

[25]

[From news story: Records for 2010 Olympic Games go missing. By Stanley Tromp. *The Georgia Straight*, April 17, 2008. *Background: Minutes of the meetings of the B.C. 2010 Olympic and Paralympic Winter Games Secretariat - a branch of the B.C. Economic Development Ministry - the entity that politically oversees the Games, were recorded for a time. It ceased doing so after being irked by the media's FOI requests for them; the Liberal minister*

for the Olympics publicly defended the move. Then-MLA Harry Bains is the current minister of labour.]

The loss of FOI access to the minutes is “reprehensible”, the B.C. NDP Olympic Games critic, MLA Harry Bains, told the *Straight*. “It’s like pulling teeth. This secrecy is absolutely unacceptable. This is billions of taxpayers’ money. It’s also paramount to the success of an organization to keep minutes so that we can review the past history of decision-making, and improve it in the future.”

[26]

[From news story: *Victoria's secrets have long been kept creatively; Freedom of Information law sidestepped by premiers for 23 years*. By Rob Shaw. *Vancouver Sun*, Oct. **29, 2015]**

Private email accounts, secret code names, mass deletion of emails, the suspicious absence of key records and an oral culture of not writing things down - these sound like ways staff and members of Premier Christy Clark's government are skirting the FOI Act.

From the moment the FOI law passed in the legislature, NDP and Liberal premiers have found ways to get around it. "I can remember public servants saying, 'Well, let's not write this down,' " said Colin Gabelmann, the NDP attorney general who created the act. It's all disheartening to Gabelmann, the father of the FOI act who has watched it be weakened and undermined for years.

"I didn't anticipate it," he said in an interview. "It's like burning books. It's destroying evidence. It's destroying history. I never ever anticipated it would come to this."

In 2000, then-premier Dosanjh was forced to admit 18 cabinet ministers were using private email accounts with secret code name aliases (Dosanjh, a self-admitted technology Luddite, had the email alias "Loriann" after the assistant who set up his computer). Critics said they were sidestepping FOI.

NDP Leader John Horgan, who worked as a staffer in the '90s-era NDP governments, said he doesn't remember finding ways to exploit the FOI act. A future NDP government wouldn't mistreat FOI, he said.

[27]

Hansard, March 7, 2013

NDP MLA Maurine Karagianis:

You'd think when the Premier has claimed credit for shipbuilding where none actually occurred, at least there would've been some shred of paper somewhere in her office to document it. The reality is that since this Premier was sworn in, the increase in "no records" responses from her office has increased by 45 percent. The lack of records only serves to make British

Columbians more suspicious about what their government is doing and why it is so secretive in hiding information through the back channels.

[28]

Hansard, Feb 16, 2017:

NDP MLA Doug Routley:

I move the introduction of the Public Records Accountability Act. I am pleased to introduce a records accountability act. This is the third time I have brought forward a bill to improve British Columbia's access to information. This all is against the backdrop of continued scandals regarding information management in this province — this against the backdrop of repeated condemning reports from successive Information and Privacy Commissioners. This bill acts on many recommendations made by the Information and Privacy Commissioner as well as several select standing committees to review the *Freedom of Information and Protection of Privacy Act*.

This bill does three key things. First, it creates a positive duty to document, which will require that the government maintain full and accurate records pertaining to any action that the government makes, which includes business done with contracted companies. Recent years' triple-delete scandal and a plethora of "no records" responses to freedom-of-information requests require that the people of B.C. have more confidence in the management of the records of government.

Second, this bill requires that this information be maintained in an accessible form so that all may reference this information and ensures that no government document is destroyed without authorization.

Finally, this bill creates the duty to investigate instances of unauthorized destruction of government information and compels public bodies to release records as to how they process freedom-of-information requests. It also removes legal immunity from officials who fail to disclose documents. *[The Bill did not pass.]*

[29]

Hansard, March 2, 2015

NDP MLA Doug Routley:

The government has a record of relying on an oral culture, increasingly relying on government and governance without documentation.

We have seen that so many times in this province, where the government has failed to produce information, has produced incorrect information, has produced misleading information that has led directly to tragedy in people's lives and a farce of good governance. Creation - in

other words, the duty to document - is a failed aspect of Bill 5. . . . What good is a Freedom of Information Act absent the information? It's empty. It's meaningless. Frankly, I would argue that it is contemptuous of taxpayers.

(Hansard, March 14, 2017)

Since the *Act* was passed in 1994, and up to 2015, there have been 50 amendments to the act. Of those 50 amendments to the act, zero were expanding openness. Zero expanded access for British Columbians. . . .

As I said, I was pretty excited when I saw that there was going to be legislation that said: "Duty to document." I was talking to people about it, and they said: "No, there is no duty to document." This is typical of this government. This is, yet again, an attempt to try to do something just before an election. To be able to say one thing when in fact they're doing the opposite — doing absolutely nothing.

[30]

NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), 2009

Q.5. B.C. is the only province in Canada which does not have an Archives Act to ensure that important government records are preserved. And currently, government documents are not being properly placed in the provincial archives. What will you do to correct these inadequacies?

Reply: An NDP government will consider Archive acts and best practices across Canada for dealing with government records in order to determine a made-in-BC policy.

Q.6. What will your government do to incorporate the principles of public access into the creation, preservation and destruction of records, including:

= a positive duty to create and maintain records of key government decisions, orders, actions, deliberations and transactions; and
= penalties for improperly tampering with or destroying records to avoid disclosure?

Reply: An NDP government will consider best practices both across Canada and internationally regarding the duty to create and maintain records in order to determine a made-in-B.C. policy.

[30]

NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), April 27, 2017 (https://fipa.bc.ca/wp-content/uploads/2018/01/BC-NDP-Response.pdf)

Q. 2. Both FIPA and the Information and Privacy Commissioner have recommended the creation of a 'duty to document' in the Freedom of Information and Protection of Privacy Act. The Special Legislative Committee reviewing FIPPA agreed with this recommendation. FIPA has called for the creation of penalties under FIPPA to discourage interference with information rights, as have the Commissioner and the Special Committee.

Will your government act on the Commissioner's recommendations to put a "duty to document" in the Freedom of Information and Protection of Privacy Act?

Reply: Yes. The B.C. NDP has introduced legislation multiple times, including the *Public Records Accountability Act, 2017*, to strengthen Freedom of Information legislation and create a positive duty to document government actions for greater accountability to the public. The B.C. Liberals have not only repeatedly refused to legislate the duty to document, including in their recent pre-election PR exercise of Bill 6, but Christy Clark and the B.C. Liberals were found to have flouted and even broken FOI laws to avoid accountability using practices including the willful destruction of emails and documents that the Information Commissioner called a threat to the integrity of access to information in British Columbia.

And the rot started right at the top: the Commissioner discovered that the Christy Clark staffer in charge of FOI coordination in the Premier's office was using Post-it notes to avoid proper record keeping, and her deputy chief of staff for operations had not retained a single email over two years working for Clark.

On B.C. FOIPP Act section 25, the Public Interest Override

[31]

NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), 2009

Q. 7. Will you reinforce section 25 of the FOIPP act, "Public Interest Paramount" to take a more expansive approach to evaluating when disclosure of records is in the public interest and a fee waiver is merited?

Reply: We introduced a private member's bill which strengthens Section 25, the public interest override clause. Our bill broadens the categories of information where public interest must be seen as paramount, and provides for a fee waiver in cases where disclosure of information is deemed in the public interest.

[32]

NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), April 27, 2017 (https://fipa.bc.ca/wp-content/uploads/2018/01/BC-NDP-Response.pdf)

Q.5. Section 25 of FIPPA states that if government records are deemed to be in the public interest, they must be disclosed, even if no request has been made. FIPA, the Commissioner [and the Special Committee] have called for legislative change to this section to bring it into line with how the Commissioner interprets this requirement.

A. Do you agree that Section 25 needs to be rewritten to reflect this?
B. What other steps would you take to bring public bodies into line with their statutory duty to disclose under this section?

Reply: The public interest override section is a key provision for Freedom of Information legislation. After the Mount Polley disaster, the Information Commissioner released a report showing that the Christy Clark government had information indicating the existence of a potential safety risk but did not disclose this to area residents. The Commissioner identified the term "urgent circumstances" in section 25 as the reason for government withholding this information and concluded that urgent circumstances should not be required to trigger disclosure where there is a clear public interest to do so. We believe the spirit of the public interest override should again be reflected both in the Act and the response from public bodies, and we will act to ensure this.

Several Other FOI Issues

[33]

NDP reply to election campaign questionnaire by the B.C. Freedom of Information and Privacy Association (FIPA), 2009

Q.1. Improving the government's response to Freedom of Information requests

B.C.'s Information and Privacy Commissioner has repeatedly called for improvement in the serious and chronic problem of delay in government responses to freedom of information requests. If your party forms the next provincial government:
(1a) What will you do to create a change in government culture and performance regarding freedom of information requests?

Reply: We are committed to restoring a high standard for public access to information and as government will require faster turn-around on Freedom-of-Information requests.

(1b) What specific amendments or reforms would you make to the Freedom of Information and Protection of Privacy Act and its administration?

Reply: We introduced a private member's bill containing several specific reforms to improve the government's response to FOI requests, including shortening response times, returning the definition of "day" to its ordinary meaning, and addressing the excessive fees that have been levied by the BC Liberal government in order to make information more readily available to the public.

(1c) In his February 2009 report, the Information and Privacy Commissioner identified the main causes of FOI delays as systemic – underfunding, cumbersome sign-off procedures and inter-ministry consultation processes, and a need for better records management practices across government. What will you do to reduce these problems?

Reply: We are committed to cutting red tape and requiring faster turn-around on Freedom-of-Information requests supported by realistic funding for the Freedom of Information and Protection of Privacy office.

Q.4. Governments in BC and elsewhere have developed a process of 'amber lighting' or providing special attention for FOI requests from the media, political parties or civil society groups. These requests often take much longer to process than requests which are not singled out for special attention. What specific measures will you implement to ensure that requests are not singled out for additional delays and obstruction?

Reply: We will not continue the Campbell government policy of targeting "troublesome requestors" and amber-lighting specific categories of requests.

Q.8. Will you extend the time period for appeals to the Information and Privacy Commissioner from the current 30 to 90 days?

Reply: An NDP government will consult with the Freedom of Information and Privacy Commissioner over methods to improve the appeal process, including the issue of appropriate time periods.

Addendum – Statements on Freedom of Information by Liberal Premiers

Open government is about giving people access to the information that they need to participate and to help us find solutions to the issues that affect us all. After all, it's taxpayers' money and it's taxpayers' information. It's time to open up government.

- *B.C. premier Christy Clark in video posted on YouTube, July 18, 2011*

We're committed to being the most open government in Canada by May 2013.

- *B.C. premier Christy Clark to Vancouver Sun, October 26, 2011*

Open government is the hallmark of a free and democratic society. Access to government information helps us as the official opposition and others hold the government to account, and accountability enhances democracy.

Secrecy feeds distrust and dishonesty. Openness builds trust and integrity. The fundamental principle must be this: government information belongs to the people, not to government.

This means, among other things, that all citizens must have timely, effective and affordable access to the documents which governments make and keep. Governments should facilitate access, not obstruct it.

- *Liberal opposition party leader Gordon Campbell, letter to the B.C. Freedom of Information and Privacy Association (FIPA), July 22, 1998*

We will bring in the most open and accountable government in Canada. I know some people say we'll soon forget about that, but I promise that we won't!

- *Newly elected B.C. premier Gordon Campbell, victory night speech, 2001*

Appendix 6

The Voice of the People

Citizens' complaints to the Premier on Bill 22

In early March 2022, in response to my freedom-of-information requests, I received nearly 400 pages of records of complaints to the Premier and the Citizens Services ministry about Bill 22, the *Freedom of Information and Protection of Privacy Amendment Act, 2021,* mainly on fees.[2]

There are also many pages of complaints about privacy protection losses in *Bill 22*, a worthy topic for another report. Some writers describe themselves as former NDP supporters who pledged to vote against the party in the next election. All the authors' names and identifying features were properly withheld under Section 22 for privacy reasons.

All the writers were then sent replies via the same generic form letter signed by Citizens Services Minister Lisa Beare. It reads in part: "Our proposed changes will help B.C. keep pace with new technology, ensure timely access to information, strengthen privacy protections, and improve services for people in B.C . . . . As a government, we are committed to open and transparent access to information. Thank you for your interest." There is no record here of any responses by the Premier. Excerpts from several of the texts appear below.

From emails addressed to B.C. Premier John Horgan

Oct. 25, 2021

Dear Premier Horgan. What has happened to you, I wonder. Don't hide your government's decision-making processes, expose them to the light! Secrecy does not work as a governing policy, so remember your values, Premier. Your legacy should be that you strengthened our democracy, not weakened it.

Oct. 27, 2021

We understand it is a pain for the ruling party to have to explain their actions from the past, but this is what democracy is all about. . . . This will not be forgotten in a couple of weeks, which seems to be what government hopes for. This change to FOI will haunt you in the next election.

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[2] One can read the records at the B.C. open government website - https://www2.gov.bc.ca/gov/search?id=4BAD1D13C68243D1960FECBBF7B8B091&q=FOI
The files are: CITZ-2021-15446 (94 pages); OOP-2021-15447 (327 pages); OOP-2021-15451 (38 pages).

When the NDP are back in opposition, which will happen eventually, you will be kicking yourself.

Oct. 20, 2021

Please reconsider your amendment to fees for accessing Freedom of Information from the government, particularly for those who are of low income, disabled, and single parents. By implanting a standard fee across the board, you are deliberately discriminating against the poor and disadvantaged persons in British Columbia.

The new amendment that makes it impossible for the Privacy Commissioner to waive fees in certain situations is really concerning. . . . Do I need to start a petition to prove this point? Please advise.

Oct. 25, 2021

John, you are not correct when you say, "Who cares?" I care very much. I have relied on B.C. journalists using FOIPPA requests to dig into casino money laundering, foreign ownership of housing, the Office of the Speaker clerk misspending, and pandemic information. It is not acceptable to me to put a financial barrier in place for any journalists to do their jobs.

Oct. 25, 2021

Some of the changes, around disclosure of privacy breaches for example, appear to be useful; but others, such as those which allow storage of personal information outside Canada, and the rather controversial addition of a fee, may not serve British Columbians well.

I ask that you withdraw this legislation, and revisit it once the committee has reported back to the legislature. Anything else looks like hubris, and that does not become you.

Oct. 26, 2021

Charging a fee for information that we should all have unhindered access to sends a strong message that you and your government have something to hide. It is baffling that you expect us to buy into this hogwash.

This definitely an issue for any re-election consideration. It certainly makes me look at your government in a different light. Very seldom do I take the time to speak out. . . but this proposed change is beyond disappointing.

Nov. 2, 2021

I'm very disappointed that it took such a short time for the NDP to introduce a B.C. Liberal type FOI access restriction. Even though I'm not an NDP member, until now I have always voted for the NDP provincially. It would appear that a minority government is best for the province.

Oct. 20, 2021

During the recent provincial election campaign, I don't recall the NDP incumbent's brochure advising voters that, if re-elected, the NDP would provide open and transparent government by introducing a $25 fee for FOI requests. I urge you strongly to reconsider this imposition on good government.

Oct. 20, 2021

Dear John. After years of preaching the sanctity of freedom of information whenever the topic came up, your government is now going to start charging anyone who tries to exercise that right. This is indeed an unprecedent level of hypocrisy from your government, and a new low in the level of government trust by the voters. Please rescind this change.

Nov 10, 2021

Hey, we all supported a few draconian impositions on our freedoms during COVID. It was fair game but you are overstepping now. This is a bit eerie, if you know what I mean. Suppressing the public's ability to hold government to account and obtain information is frightening.

Oct. 30, 2021

So arrogant, so soon. . . . Without freedom of information, there is no accountability. Where do we live, China? Hungary? Pesky journalists, pesky opposition, pesky public. The premier knows what's best. Here's looking forward to the next election. Can't come soon enough.

Oct. 19, 2021

I'm writing to express my concern and dismay regarding the new fee for the above that is set to be passed in the legislature. It is unnecessary, flies in the face of a democratic government, and provides no benefit to the public. At best this is a money grab, at worst it is initiating a gag order so that the public cannot even send in a request to access information (without paying for it) that rightfully belongs to them.

I'm appalled that the Government has chosen to act in a manner of secrecy and protectionism. This new piece of legislation needs to be abolished.

Oct. 26, 2021

We just heard about the new change the NDP is proposing in Bill 22 for charging for freedom of information. This is discouraging news for democracy. It makes B.C. politics look shady and corrupt. I'm sure that if the NDP was in opposition they would try very hard to block this bill. The fee will discourage some from paying, but not all, but that's not the point.

The point is lack of free resources for average people and media requesting information in the government files. Our little voice is nothing to you, but we ask that the NDP not pass this bill.

Oct. 24, 2021

I am writing as a concerned citizen, but also as a member of the NDP in good standing. I am writing to vigorously object to the changes being considered (actually "rammed through by the

premier's office") according to the *Vancouver Sun*. . . . The no-cost structure of FOI was set up by the NDP government of the 1990s specifically as a way to ensure a robust democracy.

This is not the behavior the grassroots expects from an NDP government – imposing user fees like what Christy Clark used to do. Let's nip this in the bud now, and allow the public, the media, and the opposition to do their job of holding the government to account. Otherwise, the other question is - what else is in the pipeline to take away our public access rights?

<u>Oct. 22, 2021</u>

I am writing to object to, and express significant outrage about the regressive changes being pushed through against our B.C. freedom of information laws. First, I write this letter as a lifelong New Democrat, where I have given a lifetime of service to the cause of human rights and uplifting the status of the average working person.

My people are those that work minimum wage, disabled people on monthly support, racialized people working several jobs. This is the BC NDP party that I believe exists – one that fights for ordinary citizens; so why is the party going against its own principles to thwart our FOI rights?

Second, the initial FOI legislation was put in place by a B.C NDP government that wanted to increase transparency and in doing so, make our laws the most accessible in Canada. Why is this mandate being changed now?

<u>Nov. 1, 2021</u>

I appreciate that criticism is hard to take when people have been farming FOI requests to back up that criticism. It is what the Act is for. . . . This proposed fee has all the moral feel of Christy Clark's triple deleted emails. This fee eliminates any moral high ground the NDP might have got from that. It will only make your supporters distrust you. I am otherwise pleased with the performance of the NDP since they took power, especially on their handling of COVID 19.

<u>Nov. 7, 2021</u>

Please withdraw this Bill and recognize the role of the all-party special committee and allow it to complete its work. For democracy to resist the rise of right-wing anti-democratic movements, people need to believe their government supports an open and transparent attitude towards decision making.

<u>Oct. 20, 2021</u>

While I have been supportive of most of your agenda, it seems that a year in power has already gone to your head. Charging $25 for FOI requests is undemocratic and exactly the type of thing that you would have opposed during 16 years in opposition. Unless you want to end up back in opposition, please stop proposing changes like this.

Oct. 21, 2021

I am deeply concerned with the above review. This seems to be leading down a dark path. Charging for FOI requests is an absolute no go. Isn't it the government's job to be transparent and accessible? I shake my head at this and wonder what needs to be hidden.

Oct. 19, 2021

Please do not start charging citizens fees for requesting access to our records. It really comes across as a petty way to get funds. Why are you taking away tolls on bridges, giving ICBC rebates and making transit free for kids, but now proposing to charge people to make FOI requests? From where I stand, it doesn't really make any sense.

Oct. 27, 2021

Why is this government NOT listening to the B.C. Privacy Commissioner for amendments to B.C. privacy legislation? Yes, the privacy legislation needs to be updated but not to benefit governments and business, and make it more difficult and costly for the public to submit FOI requests.

Nov 25, 2021

This legislation will stifle access to information, a concern expressed by the Information and Privacy Commissioner. The worst government is the one you elect because you think they share your values and then they betray your trust.

Nov. 26 2021

It is really a horrible thing you have done to become less transparent when more is actually needed! It is dishonourable that you passed this bill while parts of B.C. are in very difficult circumstances. It is certainly not a democratic decision, since most in B.C. are against your actions.

Nov. 7, 2021

I'm starting to doubt whether you are putting people first, and question whether I can trust you and your mandate letters. I'm asking you to withdraw this Bill. Please help me regain trust in public bodies by becoming more transparent.

Oct. 22, 2021

I supported you in the last two elections but my support is not guaranteed. The government when in a minority situation governed sensibly. Clearly, the need to have the support of Andrew Weaver kept the excesses somewhat in check, resulting in good middle of the road policies.

The arrogance already being displayed over the proposed Freedom of Information bill is unseemly and hypocritical. There should be no charge for these requests. Its this type of behavior that upsets people and gets them thinking about supporting the Liberals.

Oct. 20, 2021

I am very concerned about the new legislation that allows my personal data to be stored outside of Canada and potentially exposed to foreign laws which enable access to my data, which I have not authorized. In particular, laws in countries like the USA, China and Russia would not protect me from prying eyes. Please do more to protect my information.

Oct. 19, 2021

For too long the default mode in the civil service has been a paternalistic "we will tell you what you need to know." The people's data should be free and easy to access, not buried behind layers of bureaucracy designed to keep secrets hidden. If the problem is FOI requests are expensive (which I doubt), the answer is to make data available by default.

The government should have to justify its secrecy, not the people asked to justify their need for records. Of the many things B.C.'s government spend money on, servicing FOI requests is one I have zero concerns about (contrasted with, say, the billions of dollars for the Site C Dam!).

Oct. 22, 2021

I understand that the fees can range from $5 to $50. While there are few issues for large companies, I am concerned about fettering individual access as well as access from political parties. This can seriously impair the democratic process.

This feels like a Conservative move, not one I am accustomed to seeing from the NDP. Keep it in and I "campaign" for someone else.

Oct. 25, 2021

The stated purpose of you Bill 22 is to reduce the number of FOI requests! Obviously it is the people who have the least amount of money who will be most impacted. So they will have no access to the records of their own government?

Why not instead staff the department that is handling FOI requests? Why not improve its efficiency? Why not listen to the recommendations of the committees that have been studying the handling of FOI requests?   . . . . I had expected better from you.

Oct. 20, 2021

I heard on the radio this morning with dismay this new legislation regarding the $25 FOI fee. This is outrageous! Faith in our democracy is at an all time low as well as trust in government, and you think this is a good idea?

I was a longtime Liberal supporter but have switched sides for the past two elections. I feel you've doing an excellent job (thus far) and encourage you to reconsider this plan.

Oct. 21, 2021

There are legitimate changes needed to the legislation regarding use and storage of personal information, particularly in its use for healthcare and especially clinical research, etc., where we have seen major impediments to progress.

But the attempts to package such changes with policy designed to reduce your government's accountability are truly discouraging. To be honest, it does really seem to be shaping into a pattern these days.

Oct. 22, 2021

This whole fee for freedom of information requests is ridiculous, and again Mr. Horgan says "Who cares?" I care. I have helped low-income parents access information about institutions and bureaucracies. . . . FOI is one of the few ways a citizen of the province can get information and the government can be transparent.

Oct. 22, 2021

We've already paid for the information. We've paid for you and your ministers and their researchers and consultants, and we've paid for the storage and retrieval and FOIPPA specialists that handle the information. Don't tell us we have to pay twice for the same information. Stop the fees for FOI requests.

Oct. 20, 2021

I have never contacted anyone in government before but this is one that I could just NOT ignore. Your recent announcement of charging for processing FOI requests is one of the biggest hits against the democratic process in B.C. Are you turning into a Trump-like politician? . . . . This only makes it look like you're hiding things from us and unwilling to justify your decisions.

This is a huge hit against our rights as citizens of this province! And no, "other provinces do it" just not cut it. I am talking with all my friends about this, and although we may not agree on all things, we are in total agreement with this.

Oct. 27, 2021

Sorry, I just don't buy this spin. If it is costly, the solution is to be more efficient and have more open data. It'd be nice for once to have a government that was less concerned with comms-strategizing and focus-grouping every single decision, and just doing what is right and wanted by the people it purports to represent.

Oct, 22, 2021

I am writing to express my displeasure with the proposed changes to the FOI legislation, including the thinly veiled proposal to begin charging a fee for information requests. As a longtime NDP supporter, I find the increasing arrogance of your office and government distressing enough that I do not plan to support your party in the future.

I know that electronic systems can be put in place to provide access to all information. That is what your government should be doing – making all information available and then restrict access based on well defined privacy criteria. Government is not a business and should not be run as a business.

Oct. 27, 2021

I don't often agree with the B.C. Liberal party, but they are right to oppose the changes. Your government appears to want to be less transparent and hide your mistakes. The 911 heat wave situation is a perfect example of this.

Please remove the fees on access to information requests. A government that truly represents the people wouldn't stand for such a self-serving policy.

Oct. 23, 2021

Please count me squarely against the amendments you government is proposing to FOI legislation. Please remember that government is to serve the people, not frustrate their ability to oversee government work. Typically I am quite supportive of NDP policies. I am not happy about your direction on FOI – and particularly the requiring of payment from information seekers.

Oct. 24, 2021

I am appalled at the NDP's implementation of a $25 fee for routine applications under the province's FOI legislation. It is an odious and unnecessary deterrent to people making access requests.

Do not attempt to justify this fee by accusing the Opposition of abusing access to information by bombarding the government with "too many requests." Citizens want accountability and transparency. Yet once a party is elected, these principles are trampled upon.

Nov. 1, 2021

I have voted NDP in every provincial election. I'm pretty sure you are going to lose votes, and perhaps your governing positions in the next election, if you stick to this plan. I know I'm not alone in my distaste for these proposed cuts to the viability of the FOI. I've received several replies basically all saying something similar, like this one: "I've had it with the NDP."

It was actually your party that first brought in this Act in 1993. Weakening it significantly like you are think about doing would be a cruel irony.

Oct.19, 2021

Good morning John. Forgive me for being rash, but are you trying to crush democracy in British Columbia?! Do you now see any ethical issues with charging citizens money in order to find out the truth and hold the government and public service accountable? I don't know what your intentions are regarding this bill, but this looks bad. Not only does it look bad, it is bad.

I can't help but notice your party's hypocrisy given how many FOI requests the NDP put in while the Liberals were in office. Backpay all of those and then you can talk to me about $25 to use my right to access public information. Good day sir!

Oct. 21, 2021 *[The only message of support]*

Recently your Government made an announcement that people who request background information through Freedom of Information will be charged $25, which I think is a small price to pay for demanding a lot of staff time to respond to these requests.

I think it would be prudent to have the Ministry explain why the $25 is reasonable, and also that the Government receives repeated requests from a few people who from my experience are trying to tie up Government operators, and based on you record nothing untoward is found. Keep up the good work John. Your friend.

From emails addressed to Citizens Services Minister Lisa Beare

Oct. 21, 2021

Dear Minister Beare. Freedom of information is critical for transparency and accountability, and in my opinion fees act as a barriers to access. Again, in my opinion, there are already sufficient provisions for when fees are appropriate. . . . Additionally, I believe that any information that must be provided by statute should be exempt from fees.

Nov. 10, 2021

I have been a B.C. NDP supporter all my adult life. . . . Proud that is until now. Bill 22 is, on balance, retrograde legislation. It should be withdrawn and re-written. Some of Bill 22's provisions are welcome but overall the bill is not a worthy effort.

I know how challenging the Act can be for government. . . . Fees for access are misguided. They will penalize the wrong people. To ordinary citizens looking for government (i.e., our) information, they will be just one more reason not to bother. At first blush, that may seem like a benefit, but is "trust us to govern well" really your motto? What about when it's the other guys' turn again?

Oct. 27, 2021

None of what you are saying meets the goals of a party that purports to reflect what the values of working people should be, and I am very surprised that the people advising you and the party are engendering an era that eliminates one of the best FOI laws in Canada. I was extremely disappointed that this bill was referred to committee stage before first reading.

The "fee for access" put simply is a weak justification. . . . this is a political game because it shows the government has something to hide – including COVID 19 data, the Massey Tunnel briefing documents, Site C documents, St. Pauls's documents, and what else? Never have I felt such a sense of shame for a government I have so proudly supported.

Oct. 28, 2021

Thank you for your reply. You have not addressed my central point, however. You have an all-party committee which has been charged with submitting a report that would seem to be relevant to the work that you have been undertaking to update B.C.'s freedom of information legislation.

Why not wait for the report prior to introducing new legislation? Why do we have parliamentary committees anyway?

From emails to NDP MLAs

Oct. 21, 2021

I am starting to doubt whether you are putting people first and question whether I can trust you and your mandate letters. Don't you think you are on the wrong side of this one?

I am asking you and you colleagues to consider these actions: Recommend the NDP withdraw this Bill. Recognize the role of the all-party special committee and allow it to complete its work, including an open consultation process. Commit, on the record, to introduce comprehensive amendments to FIPPA that reflect the recommendations of past and current special committees.

Nov. 26, 2021

What has happened to the NDP? What happened to transparency builds trust? Your party is unrecognizable. I watched as party members cheered the move to push through this bill with debate, denying British Columbians the right to information. Unbelievable. - Your constituent (for now).

Oct. 25, 2021

It's unbelievable that now that the NDP (my party!) has a majority, it seeks to introduce a $25 fee for FOI requests. Wow, really? The "party of the people" wants to reduce FOI requests.

This bills bespeaks a political party that does not want to have its work, policies, decisions examined by society in general, but the opposition, by citizens. I'm appalled and ashamed to see the NDP propose this legislation. A party who wins a majority is well advised to remain humble with trust bestowed.

Oct. 30, 2021

Please don't make me regret voting for you by failing to speak up strongly and vote against the $25 freedom of information fee. This fee may seem small to you and Premier Horgan, but it is the weekly food budget for many people. In a time of increased costs for everything, including the basics of food and shelter, this Bill is a cold and calculating way to keep us uninformed and mute. I expected better.

Appendix 7

Student societies and financial accountability

Related to the issue of quasi-governmental FOI-exempt bodies, there is another overlooked but extremely serious problem, one that I should have raised long ago: the secrecy of student societies, some of which have faced major financial scandals. The key question is: What is the best mechanism to ensure more transparency?

Several student societies, acting like a law unto themselves, manage student money much like in a Wild West - a problem lying under the radar for decades - and they urgently require more accountability. Many excellent points were made by Langara students Owen Munro and James Smith in their presentation to your Committee on November 18, 2015 (see below).

The problem began with Section 19 of the *B.C. College and Institute Act*, which states that institutions must collect fees on behalf of student unions. Oddly, it seems this section was passed as a sort of blank cheque, with no thought as to how or if such financial activity was to be scrutinized, and financial probity enforced.

"This power is bestowed upon people who do not have the qualifications or meaningful experience to manage major sums of public money without being accountable to a certain standard of high quality," as Munro and Smith noted, adding of the elected members, with their rapid turnover, "These are young people with little to no experience in politics, finance, law or leadership."

(We should also take note that some wrongdoing occurs not so often from elected younger student councillors as from the fulltime, long-term staffers – often much older, shrewd, unionized, and very well reimbursed with sometimes-hidden benefits. Some believe Victoria should set a cap on their remuneration.)

College administrators and B.C. politicians and bureaucrats generally decline to intervene, deferring to the union's pleas for "independence," and thus abandoning students, perhaps seeing their needs as too inconsequential or unpleasant to bother with; most prefer to not even discuss it. In the early 1990s, the Minister of Advanced Education said he had considered placing one particularly out-of-control student society under trusteeship due to its financial wrongdoing, but most regrettably he then declined to do so.

Most graduates of the Langara Journalism Program (which I completed in 1993) can recall longstanding conflict with the fabled Langara Students Union. It has been widely reported that fights over lack of financial transparency for students' money has led to student journalists banished from some societies' premises, yelling matches, threats of lawsuits and violence, and even assaults. All this needs to end.

One member of this Committee member on Nov. 18, 2015, in regards to extending the *FOIPP Act* to the LSU, raised the caution that "hard cases make bad law." That may be so if the LSU was unique, but the problems are systemic, extending across the province. See the sidebar below

for news of financial wrongdoing in the student societies of Kwantlen Polytechnic University, Douglas College, the University of Victoria, and the College of New Caledonia.

For instance, between 2005 and 2011 the Kwantlen Student Association was embroiled in a series of scandals connected to their one-time director of finance and chairperson of the board, Aaron Takhar, and the Reduce All Fees slate of candidates, including mismanaged and missing funds, election improprieties, and many lawsuits. One audit found nearly $150,000 of student funds had been spent without supporting documents, including $67,000 paid to Takhar's consulting firm.

At one B.C. students' society in the 1990s when $20,000 vanished, the police fraud branch investigated, and said "the students' accounting systems were so bad that you couldn't even tell where money had been stolen" (e.g., they were routinely forging signatures on cheques); some staff had been paid many thousands of dollars in accrued overtime with no time sheets. The little information that was, with much difficulty, revealed here is likely just the tip of the iceberg.

Even when wrongdoers are identified, they are very rarely punished, so the deterrent value is nil. Some years ago, one B.C. student society employee was caught stealing several thousand dollars from a beer garden, and the executive declined to prosecute, because, as a student official put it to the media: *"This is not the real world."* And yet they must be instructed that this is *real money*. Governments' strangely *laissez-faire* non-response to such activity creates a rich feeding ground for wrongdoing, enables such misdeeds, and makes external media watchdog access all the more necessary (beyond the student media).

Since they are not governmental bodies, these societies are not covered by FOI laws. But all B.C. student societies are registered societies, governed by the B.C. *Societies Act*. That *Act*, which governs non-profit organizations like the LSU, and 26,000 other societies in B.C. The government admitted the *Act* was outdated and so it underwent a review in 2012.

Lorne Brownsey, assistant deputy minister of advanced education, sensibly wrote to the *Societies Act*'s review to say of student societies: "It is submitted that any new or amended *Societies Act* must include provisions that require not-for-profit organizations to accurately share information about their governance, finances and operations at particular intervals. There must be appropriate investigative mechanisms included in the new legislation to enable the registrar to investigate, and act upon, potential abuses or deceptions."

For example, each year the LSU collects hundreds of dollars in mandatory fees from every student for an income of more than $2 million per year. Long renowned for its arrogant opacity, in 2012 the LSU pushed its secrecy beyond endurance when it passed changes to its constitution that could allow the LSU to bar students from attending student society board meetings, prevent in-camera meetings from being taken, and stop students from making copies of society records, even with a ballpoint pens.

In response, the *Societies Act* was amended it 2015, and it now states in Section 27, that for members seeking records, "the society must provide the person with a copy of that record." Yet

the problem is there is no strong mechanism in the *Society Act* for a member to *enforce* this inspection right if the society refuses to comply. The final resort to enforce the *Act* is for students to appeal to court, which most cannot afford to do. What is the best course?

Possible options

One route may be to amend the B.C. *FOIPP Act* to cover student societies, with all of that *Act*'s powers - especially the Information and Privacy Commissioner's authority to order record disclosure. This option would be contentious, for at least three objections may arise to counter it, all which should be fully considered and discussed:

[1] "Is the *Society Act* not a better vehicle to enforce more financial disclosure?"

Students have complained the current *Society Act* is ineffectual at enforcing financial accountability in student societies. On the other hand, if the *FOIPP Act* covered student societies, the Office of the Information and Privacy Commissioner already has three decades of experience and an infrastructure in place. (The OIPC should be granted extra resources when its mandate is expanded to include student societies, yet this would still likely entail less cost than having the Societies branch try to set up and replicate the OIPC's powers.)

[2] "Why should the *FOIPP Act* cover only student societies but not other societies?"

Student societies are an exceptional case, [3] for these reasons:

• A post-secondary education is regarded as indispensable for most forms of success today, and student unions are different from other societies, in that there is no option about membership. "For us, that makes a student union a de facto part of the post-secondary institution," i.e., a public body, noted Munro and Smith.

• Student unions' funding is taken mainly from the students themselves. Yet in turn much of those students' money comes from government through student loans and grants, that is, taxpayer's money, and so the general public has an interest in the society's spending as well. This is *not* "inside baseball."

• Some student society officials - especially at community colleges - lack the experience to manage multi-million dollar budgets and so require more external oversight.

[3] "*If* the student society is covered by the B.C. *FOIPP Act*, who should act as its director of information and privacy (DMIP)?"

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[3] There is one other B.C. society covered by the *FOIPP Act*: the Legal Services Society. It provides legal aid in the province, receives large amounts of government funding for this goal, and works under their own *Act*, not under the *Society Act*.

It should be the college or university administration's current DMIP, a trained professional, one objective and detached from the student society. The society itself cannot be entrusted with this responsibility, which would be a conflict-of-interest, even if it did improbably have the technical competence for it. (The DMIP's salary and resources could be enhanced to fulfill this added new task.) This is not an encroachment upon the society's cherished "political independence," despite its vocal protests; the parent institution's DMIP would not create or enforce student society policies, just the *FOIPP Act*. If the societies have nothing to hide, then they have nothing to fear.[4]

As well, the cost of administering the *FOIPP Act* on campuses would likely decline over time, as the society eventually begins to routinely release more oft-requested records (as it always should have done) and knowing it has no legal grounds to deny them under FOI; such would include salaries, expenses, contracts, meeting minutes.

Of course, those opposed to FOI coverage would have many counterarguments, such as: It is unfair to single out student societies, for other societies might have as bad or worse problems as yet unknown; labour unions also collect mandatory fees, and that is no reason to FOI-cover them; such senior external oversight would be an intrusion on the society's autonomy, and could be used as a means of political control, and more.[5] Yet I believe the benefits of FOI coverage would far outweigh these objections, overall.

In sum, it seems incomprehensible why senior governments have abandoned students for decades as millions of their dollars have been extracted from their pockets against their will, gone to unqualified managers, spent in secret, and then untold amounts of it stolen or wasted with impunity. This must not continue.

Some advocates believe that, while extending *FOIPP Act* coverage to these entities might not be the perfect solution in every regard, it is still the best (or rather least negative) of the available options, and on balance far better than the current status quo. The *Societies Act* was amended,

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[4] It should be noted that whenever any call is raised for more external financial accountability, the student society routinely and shrilly bewails any such call as a veiled attempt from the provincial government to squelch its political activism (even its farcical delusions of influence on foreign affairs, fantasies best indulged on one's own time and expense). Thus the society tries to rally all students around it for supposed protection from Victoria and other hostile outside forces, often "fascist." A staffer at one scandal-ridden student society that was facing a possible shutdown by the college in the 1990s said the cancellation is "absolutely linked to [the society's] political activity," he said. "What other reason would there be?" This is a wholly spurious plea that should be resolutely ignored as a red herring. Transparency for students regarding their own money is our only purpose.

[5] As well, others may plead against *FOIPP Act* coverage with, "The *Society Act* could be made more effective by amendments." (I would call this prospect doubtful; it was last amended in 2015, after consultations, with needed accountability measures still missing.) Perhaps routine publication of certain records for institutes of higher education could be mandated in other statutes such as the *B.C. College and Institute Act* and the *University Act*.

yes, and that was a good start. But that is not the end of this story, and some still perceive shortcoming with it. We need to re-examine this problem, regularly and rigorously.

(Noteworthy points in the revised B.C. *Societies Act*, and LSU Bylaws)

Societies Act

Current to Nov. 24, 2021

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/15018_01#division_d1e1781

36 (1) The financial statements of a society required under section 35 must include a note providing the information required by the regulations in respect of

(a) the remuneration, if any, paid by the society to the directors in the period in relation to which the financial statements are prepared, and

(b) the remuneration paid by the society in that period,

> (i) unless subparagraph (ii) applies, to the employees of the society, and to persons under a contract for services with the society, whose remuneration was at least the amount specified in the regulations, or
>
> (ii) if there are more than 10 persons described in subparagraph (i) whose remuneration was at least the amount specified in the regulations, to the 10 most highly remunerated persons.

(2) A note in the financial statements referred to in subsection (1) need not identify directors, employees or other persons referred to in that subsection by name.

[S. Tromp: The subsection (2) is utter nonsense. There are no legitimate privacy rights to such remuneration. Each year the B.C. government publishes salaries and expenses of named persons in the Public Accounts online, and so it should be here. Sections 195 and 196 below also require more consideration.]

195 Section 28 *[copies of financial statements]* does not apply in relation to a member-funded society.

196 Section 36 *[reporting on remuneration of directors, employees and contractors]* does not apply in relation to a member-funded society.

Langara Student Union (LSU) bylaws, as of 2021

https://www.langarasu.ca/about-us/governance/langara-students-union-association-bylaws/

13.2 Inspection by Members

13.2.1 Unless Council determines otherwise, subject only to Section 24(2)(a) of the *Societies Act*, no Member is entitled to inspect or obtain a copy of any of the records of the LSU described in Section 20(2) of the *Societies Act*.

13.3 Copies of Records

13.3.1 All records of LSU (including any copies made thereof) shall not be reproduced without the express written consent of the President or Vice President Finance & Administration.

[S. Tromp: The sections above should be examined for conformity with the letter of the Societies Act, and their spirit only further demonstrates the value of placing student societies under the B.C. Freedom of Information and Protection of Privacy Act.]

B.C. student societies and the need for more financial transparency

These news stories only detail problems that somehow became public, and likely indicate the tip of the iceberg. As student societies benefit from a large and involuntary public subsidy, they should be open to scrutiny by the mainstream media and other outside examiners via the FOIPP Act (more so than the student media might or might not irregularly provide, through their privileged access as society's member via the Society Act). – S.T.

Student association in hot water; University board wants power to intervene to control how money is spent. By Jennifer Saltman, *The Province*, Vancouver, Sept. 19, 2011

Kwantlen Polytechnic University is asking the province to change legislation so universities can intervene in student association business to protect the millions of dollars in student fees they collect. The Kwantlen Student Association has a history of financial problems and is involved in three active lawsuits - two of which were filed in August. Recent allegations about how money is being spent, how the student association is operating and ties between the current executive and a former board member who is accused of mismanaging funds has the university concerned.

Former UVic manager wanted for stealing: Student society noticed money missing last year.
By Lee King, *National Post*, Oct. 31, 2002

Saanich police have issued an arrest warrant for a former University of Victoria Student Society manager wanted for stealing funds. Vivek Sharma, 28, had been employed with the society as business operations manager from 2000 to 2001. The charges against Mr. Sharma include fraud, theft and causing a person to use a forged document.

CNC to release money to student association: Organization hoping to get back on track after earlier allegations of misuse of funds. *Prince George Citizen*, Nov. 29, 2001

Eight months after it froze funds to its student association over issues of audit reporting, the College of New Caledonia is preparing to release the money, an official said. Until this month, when new elected representatives took office, the association had been inactive after an internal dispute came to a head in March. Penny Fahlman, the college's director of finance and bursar, said part of the internal conflict involved allegations of misuse of funds. As well, the association had received poor audit reports for the previous three years, due to inadequate documentation.

College holds back student union fees. By Blais Simone, *Coquitlam Now*, Nov. 4, 2006

Douglas College is holding more than $1.5 million in student fees back from its student union - money collected since May 2005 - amid allegations of improper financial practices and mismanagement by the student union.

Regional Roundup: New Westminster. *Vancouver Sun,* Apr. 27, 1998

Charges have been laid against a Douglas College student society member suspected of improperly cashing 10 cheques worth over $6,000.

Student union cash crunch looms: Langara threatens to stop collecting LSU fees. By Lynn Moore, *Vancouver Sun*, Feb. 4, 1992

Unless Langara's troubled student union cleans up its act - and soon - it will lose its major source of funds. Citing financial and personnel problems, administrators at the Vancouver Community College campus have decided that effective Aug. 26, they will no longer collect student fees for the association. The fees account for about two-thirds of the association's annual revenue of about $310,000 and cancellation of the fee-collecting agreement could kill - or at least weaken - the Langara Student Union.

Several key points made by Langara students on *FOIPP Act* amendments

Meeting of the Legislative Special Committee to review the FOIPP Act, Nov. 18, 2015.

https://www.leg.bc.ca/content/HansardCommittee/40th4th/foi/20151118am-FIPPAReview-Victoria-n7.htm

O. Munro: My name is Owen Munro, and I'm with my colleague James Smith. We are journalism students at Langara College, and we are here today to present an argument about why student governments and student unions should be covered under the British Columbia *Freedom of Information and Protection of Privacy Act*.

We believe that student unions should fall under the same jurisdiction as public institutions, and we intend to show that the current system is both outdated and exploitative. It doesn't hold accountable student unions who collectively are in possession of millions of dollars across the country, and these student unions can sometimes overstep their roles within the B.C. *Society Act* to their own benefit.

FOI records are an essential tool for students and student journalists to hold university and college student unions to a high degree of accountability. Students are in a position where, despite having many available resources, they are placed at a disadvantage. Student unions are treated as a society in the B.C. *Society Act* and aren't transparent in their actions.

For students wanting to know more about their unions, from salaries to in-camera meetings to minutes, the most successful way of doing so is through the B.C. *Society Act*. Each student union is a registered society, but they are not recognized as governmental bodies, as some other functions would be, despite having many similarities to those governmental bodies.

They hold committee meetings and elections. They have control over student fees, which are mandatory. They use their own accounting systems, and they sign contracts with service providers, such as food and drink providers. They make decisions that really just affect student opinions and options as a whole, from clubs, activities, food and drink options and events. They are not unlike the structure we experience from any other governmental bodies.

We have very little influence on the interests of student unions that have become increasingly secretive and favourable towards their own benefits. In 2012, the Langara Students Union successfully eliminated their own members from attending in-camera meetings, a symbolic representation of their secretive operations toward the very people that fund them.

While we have the ability to request and to access information from our public institutions, the fact of the matter is that student governments are much more secretive, despite running essential services with fees that are mandatory of every student attending that public institution. Ironically, the fundamental service that a student union or government is mandated to provide is advocacy on behalf of the students.

There are many documented abuses of power by student unions and governments dating back to the inception of FOI laws in British Columbia. Section 19 of the *B.C. College and Institute Act* states that institutions must collect fees on behalf of student unions. This power is bestowed upon people who do not have the qualifications or meaningful experience to manage major sums of public money without being accountable to a certain standard of high quality.

There needs to be a level of transparency that ensures that our students' public money isn't being spent in unscrupulous ways and that we can trust our student governments are representing the best interests of students and not just their own agendas.

We would like to have something other to lean on than an exploitable B.C. *Society Act*. The society branch doesn't hold any power in regards to enforcement of the regulations to student unions. They can only remind student unions that the Society Act is in effect, but their power to do more so doesn't go beyond that.

For students to do anything beyond this, we must use section 85 of the B.C. *Society Act* and can request a superior court to remedy irregularities of student unions. This argument is underscored by the student unions' view, especially at Langara, that they cannot be challenged by students because they are aware of the time and the cost that it takes to find some form of justice for most students.

I can imagine the difference we would make if we were able to spot reckless and inefficient spending in our own student unions, not just at Langara, but other public institutions. That would be something that not just students but the general public needs to know. [….]

My colleague James Smith will now speak in-depth on specific occurrences that have happened at Langara and other public institutions in British Columbia in recent times. There have been many situations where the secrecy of our own unions have been in contravention of the B.C. Society Act and the principles which they claim to stand behind.

We have stood idly by for far too long without trying to make a profound impact on the systematic secrecy and unaccountability of the actions of student unions. There is vital information and data that is being withheld that urgently needs to be addressed for a transparent system that holds student unions responsible for their own individual actions.

J. Smith: It's our position that student societies should be subject to the *Freedom of Information and Protection of Privacy Act*, as student societies are de facto part of the post-secondary institutions with which they're associated. B.C. post-secondary students collectively pay their unions millions of dollars every semester, yet there is little to no oversight to ensure that the money is spent responsibly or that the elected bodies adhere to their own bylaws or the statutes of the B.C. *Society Act*.

The union fees collected by the university, college or institution are mandatory, as is membership with the existing student society. It's mandatory and automatic. Anyone seeking a post-secondary education must, by default, join their institution's student society, making these societies as much a part of the school as anything else, such as classes or the school's administration.

A post-secondary institution, of course, has no say over how these student societies run, and rightly so. However, if a student - i.e., a union member - takes issue with how the union is being run, thinks the union is in violation of a bylaw, there's little recourse for them.

As members of a student society, we are guaranteed access under the *Society Act* to financial records, auditor reports, meeting minutes, etc. However, if we don't get access, or if the records are incomplete or unnecessarily censored, there's nothing we can do without hiring a lawyer, which we obviously can't afford to do.

While I can't speak directly to the situation at other post-secondary institutions, I can tell you that Langara Students Union, which controls the fees that are mandatorily collected by the college on their behalf, operates entirely behind closed doors and seems to do everything in its power to keep it that way.

I know that journalist and Langara alumnus Stanley Tromp mentioned the LSU briefly in his presentation before this committee on November 9. As student journalists, it is our duty to keep the public informed about the issues that affect them — in this case, how millions of dollars of their money is being spent by a group of inexperienced people with little to no oversight.

Every year, the LSU council designates a new elected member to act as their immediate liaison. That person is our sole point of contact. All other elected members and paid staff are barred from talking to us under any circumstances, citing LSU policies that aren't available on their website or anywhere else and that they won't show us a written copy of. The media liaison, regardless of who it is, is often hard to reach and, as often as not, leaves us without comment before deadline.

Efforts to get the information we want ourselves are equally frustrating. The LSU bylaws require all members, not just those in the media, to give 48 hours notice to inspect any and all documents to which we're legally entitled. The bylaws do not specify any specific officer or adviser or staff member or councillor who must be present to release these documents. [….]

Adding to the culture of secrecy at the LSU, all meetings are conducted behind closed doors. The public and membership are not allowed to attend these meetings, as per article 5.14, called "Closed council meetings," of the LSU bylaws. In addition, an unknown number of meetings are conducted in camera and off the books, making it impossible to fully know what the union is doing or how decisions about the spending of students' money are being made. [….]

The extreme level of secrecy at the LSU allows them to operate however they want and do whatever they want with few to no checks and balances. The lack of oversight for the LSU and other student societies in our province has led to many instances of malfeasance over the years, from election irregularities to mismanaged funds and, in at least one recent extreme case, alleged embezzlement.

Between 2005 and 2011 the Kwantlen Student Association was embroiled in a series of scandals connected to their one-time director of finance and chairperson of the board, Aaron Takhar, and the Reduce All Fees slate of candidates, including mismanaged and missing funds, election improprieties and more lawsuits than I can count. [….]

Of course, issues involving student societies are not always, or even often, because of malicious intent by its elected members. These are young people with little to no experience in politics,

finance, law or leadership. Many, if not most, of them are often in it for a bump to their resumés. For example, a student at Langara who wants to transfer to UBC has to have extracurricular activities, like student government, on his or her resumé in order to get accepted. He or she may have no interest in it otherwise. [….]

It is our position that if student societies were subject to *FOIPP Act*, they could better be held accountable to their public membership, which mandatorily pays its fees through public institutions. *FOIPPA* requests can be costly, but they're far cheaper than court cases and more readily available for the public to use — especially students. [….]

[NDP MLA] David Eby: I'm very concerned about the information you presented about what's happening at Langara, as an advocate for open government and transparency at all levels. [….]

So if I could just get you to comment on how unique the situation is at Langara - whether the change made by this committee would put undue bureaucratic obligations on to a number of small committees with, admittedly, large amounts of money at the university level but limited resources to fulfil freedom-of-information requests and whether we do that for the entire province to respond to a single situation at Langara.

O. Munro: If I can take this one. This isn't necessarily a situation that is unique to Langara. This is a situation where many other student unions — whether it be Kwantlen, UBC, Douglas College…. This is happening all over, not just Langara. So if we could have some sort of FOIable system where we can at least see the minutes that these meetings have produced, even if it wasn't an in-camera meeting, and have some sort of accountability that way….

J. Smith: Using the example of the Kwantlen Student Association and that whole situation, the executive board members and that were a group of friends and relatives of Takhar. Even when the meeting minutes and that kind of thing are publicly available, as they are with some student associations…. They do put their minutes and financial records and that online and openly available in their offices. That doesn't necessarily let us know how a group of students, like in the KSA example - which, admittedly, is an extreme example - would coordinate their efforts outside of the meetings.

FOI access to things like e-mail records and that would help uncover things like that kind of alleged corruption and collusion in order to maybe stop the problem before it gets out of hand. [….]

[NDP MLA] Kathy Corrigan: What I'm wrestling with is what we define as government. I think that FOI legislation is meant to cover government and government bodies. What I'm trying to figure out is: is a student union a government body? Maybe it can be extended to bodies that are funded by government bodies or to programs that are done for the purposes of providing public services.

I'm wrestling a bit with that concept of whether or not a student union is a government-related body. I'm wondering if you've got any comments on that.

J. Smith: I believe that the student unions are different from other societies, such as trade unions, in that there's no option about membership. In your career, you can choose to join a union workplace or a non-union workplace. Depending on your career, that choice can be very limited, but it is there. If you want a post-secondary education, which you have to have these days, you have to join these unions. You're not really given a choice in the matter. As I said, it's mandatory, and it's automatic.

For us, that makes a student union a de facto part of the post-secondary institution, even though the post-secondary institution doesn't have any say over how not just the LSU but the student societies run. In that way, I think it's different. It's kind of a unique situation compared to other societies covered by the *Society Act* or the FOI people. [….]

Also, the money the LSU manages is coming from students. A good chunk of that money is coming from the government through student loans and student grants as well. And the LSU…. Sorry, I keep saying the LSU, and I mean to be more general. The student unions advocate for students and have, often, a seat on the college or university board, which puts them essentially as an elected member on the governing body of a public body. Again, that lends itself to my argument that they are a de facto part of that public body.

Appendix 8

Miscellaneous FOI "creative avoidance" methods

Unfortunately, beyond "oral government," there are yet other pernicious practices employed to undermine the FOI process. Perhaps an amendment to the B.C. *FOIPP Act* or a new *Archives Act* should explicitly prohibit many of these, with penalties for violations. Mere policies or regulations to bar them are insufficient, because such rules can too easily be dropped at any time by a future administration.

Some officials sadly evidence a fertile imagination for "creative avoidance" as one commissioner called FOI resistance. Besides recalling my own FOI experiences, such cat-and-mouse games have been widely reported from various nations, and from sources such as information commissioners' reports, public inquiries, books and news articles. Practices can include:

• Changing the title of a record sought by an FOI applicant, sometimes after a request for it is received, then wrongly telling the applicant "we have no records responsive to your request."[6]

[6] This was noted in the Somalia Airborne inquiry report of the 1990s, whereby documents called "Response to Queries" (RTQ) were simply renamed by officials as "Media Response Lines" (MRL), with the officials then denying to the media *ATIA* applicant that the sought RTQ records existed.

The law should make it make it absolutely clear it is only the subject matter that counts, not the record's title per se. (Thankfully some FOI laws prohibit the destruction of a record after a request for it has been received, even if the record had already been scheduled for destruction.)

• Post-it sticky notes. Such notes affixed to documents can contain the most important information on a topic. Yet when an FOI request comes in, some officials have removed the sticky notes, photocopied the denuded original, mailed that copy to the applicant, and then later reattached the notes to the originals – all in the false assumption that such notes are not covered by FOI laws.[7] Officials can also write penciled notes that can be easily erased.

• Storing records offsite - or at a site owned by a private company partnering with government - and so claiming they are not in the state's "custody" and cannot be accessed. (See the Quebec FOI's law solution.[8])

• Sending illegible photocopies, which can delay the FOI replies for months as the applicant appeals, or applies over again for legible copies of the same records.

• Incorrectly claiming that documents are not available in a readable format, or records are in too fragile a condition to be accessed.

• Providing only a positive summary of the records instead of the original records sought, offering other information as a compromise, or burying the applicant with positive but not really relevant records.
9
• Mingling exempt and non-exempt records together, then claiming an exemption for them all; for example, incorrectly placing records into files of cabinet or international relations documents Mislabeling records, which is a major problem in federal *ATIA* requests for cabinet records.

• Stonewalling, i.e., incorrectly claiming that records do not exist when they do; or not searching properly and then claiming documents cannot be found

• Inflated fee estimates. This was detailed during the 1997 inquiry on the Canadian military scandal in Somalia, along with established cases of improper document alteration.

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[7] Commissioner Denham's 2015 report noted an FOI coordinator in the premier's office used disposable Post-it notes to avoid generating records. Yet in the B.C. FOI regulations, any marginal note made upon a document transforms that record into "a new record," and a separate photocopy is made of it for FOI applicants: "Marginal notes and comments or "post-it" notes attached to records are part of the record, not separate transitory records. If the record is requested, such attached notes are reviewed for release together with the rest of the record." Ideally, such FOI regulations would be placed in law.

[8] Quebec's FOI law notes this issue: "1. This Act applies to documents kept by a public body in the exercise of its duties, whether it keeps them itself or through the agency of a third party."

• Mislabeling records as “preliminary” or “investigatory,” and so forth; or arguing that the records need not be released under the FOI law because they will be published within 60 days – and then not publishing them, or delaying replies until after the applicant’s deadline to appeal to the commissioner has run out.

• B.C. *FOIPP Act* Sec. 6 prescribes that an agency must produce a record for an applicant if “the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer,” and “creating the record would not unreasonably interfere with the operations of the public body.” But some agencies could overstate the difficulty of doing this, and so refuse to create records, or heighten fees.

• Interpreting the wording of an applicant’s request too narrowly, or even altering it and then replying to the agency’s re-worded version; delaying the release for months with clarifications and re-clarifications until an issue is stale, or until after an election.[10]

• Still other methods were detailed by former Australian FOI official Don Coulson. These included “pumping applicants for extra information to find out why they want documents, before briefing ministers and advisers; delaying the release by saying an application has been overlooked, the department is overloaded with requests and is under staffed; hiding behind the excuse that requests are too voluminous or time-consuming to process, often without helping applicants to narrow down exactly what they want; others did not notify applicants of their rights of appeal.”[11][12]

Appendix 9

What price accountability? The real cost of FOI

In reply to the frequent governmental complaints of the cost to taxpayers of the FOI system, and the media’s usage of it, one could well argue that the reverse is true, because public outrage at government waste – exposed through FOI requests - prompts the state to cut such waste, or even prevent it before it occurs. Hence the modest annual cost of FOI may be an impressive bargain.

Vaughn Palmer noted this fact back in 1992, before the FOI law was passed, while reporting that the government had advanced hundreds of millions of dollars in loans to private businesses, with all the terms secret, even the loan size. In lieu of FOI law, the media had to rely on leaks, which exposed cases of massive waste in the loan program. Today records on such cases could be publicized through FOI requests.[13]

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[10] In 2007 Alberta's privacy commissioner ruled the provincial government for political purposes withheld information about the government's use of aircraft until after the 2004 provincial election.

[12] Chris Tinkler, *The FOI’s bag of dirty tricks*. Sunday Herald Sun (Australia), November 10, 2002

In one case then, a minister tried to push through a loan to an aviation company, at cost to taxpayers of $40 million or $160,000 per job - which the media only knew because a confidential cabinet papers on the proposal was leaked to the *Sun*. The "loan" died soon afterward, a victim, some said, of premature disclosure, wrote Mr. Palmer, adding:

> That kind of disclosure might have helped to derail other boondoggles - and there are plenty of examples. The recent review of government finances determined that some $300 million worth of government loans have gone bad in recent years. Part of the price tag for not having freedom of information.[14]

Journalist Russ Francis of *Monday Magazine* made the same point: "How many more fast ferry projects and Skeena Celluloses will never even be proposed for fear their terms will be revealed under FOI?" Conversely, knowing the FOI system is ineffective can enable politicians and bureaucrats to spend in ways that they realize the public would consider intolerable if it knew.

We also too often forget the public paid for the production of these records, millions of them, and so they are for that reason as much the public's *property* as are road, schools, and bridges. (The public hence should not have to pay for their production twice, through FOI fees.)

The cost of administering FOI, allegedly high, is really an almost imperceptibly small fraction of the provincial budget, and a bargain in terms of its democratic benefits. Even a very traditionalist Canadian government report, entitled *Access to Information: Making it Work for Canadians* (2002), found that the entire federal FOI system cost around $30 million annually, or less than $1 per Canadian per year and, "This is a modest cost, in light of the significant public policy objectives pursued by the Act: accountability and transparency of government, ethical and careful behaviour on the part of public officials, participation of Canadians in the development of public policy, and a better informed and more competitive society. " The same principles apply to British Columbia too.

Yet sometimes officials try to thwart reform to the FOI law and discredit it by telling politicians (in private) that the process is too often used by "frivolous and vexatious" applicants, such as some journalists seeking sensational information that they can use to "sell papers"- all of which causes the state to waste funds and labour to process FOI requests, resources that are more needed to "provide core services to the public," and so forth. Yet even if such problems had ever occurred, this would not invalidate the FOI law, and the B.C. government retains the option to apply *FOIPP Act* Section 43 to bar truly frivolous applicants.

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[13] Or sometimes perhaps not. In such cases of government loans, I could easily envision the government inappropriately applying *FOIPP Act* exemptions to deny access, such as Sec. 12, Sec. 13, Sec. 17, Sec. 21, and others. This in turn might prompt appeals to the Commissioner, two years for a ruling, an order that the government might then appeal to judicial review, etc. Woeful as all this is, still better overall to have the *Act* than not.

[14] *Cry freedom of information this week*. By Vaughn Palmer. *The Vancouver Sun*. March 30, 1992.

In 2007 Ian Paisley, the First Minister of Ireland, indicated he would like to limit FOI enquiries aimed at the Executive. "On occasions," he argued "the requests are of a wide-ranging and detailed nature that requires many hours of research, and are sent in by lazy journalists, who will not do any work, but who think that we should pay them and give them the information that they want." [15]

But on the contrary, the opposite is generally true, for journalists who research, design and file access requests are amongst the hardest working, as they need to be when the process is so increasingly onerous; and surely less indolent than those who rely upon press releases for story inspiration (as the state infinitely prefers they would).

Regrettably, these specious claims may be influential. A preferable outlook was voiced by B.C. premier Mike Harcourt, who told the Webster journalism awards dinner in 1993 that "our government passed an FOI law so you fellows can do more stories."

As regard to claims of the media being driven solely by profit, the notion that information obtained through FOI requests sells more newspapers is quite amusing. If only it were so! When the *Canberra Times* of Australia sought information on various programs through FOI, the government proposed hefty charges, justifying these by claiming the paper would gain a commercial benefit. The editor replied:

> I would dearly like to see the research to back up that claim. Sadly, to my knowledge, there is no evidence that newspapers publishing serious articles for the public benefit gain anything in circulation or advertising revenues. If anything, such revenues are more likely to be threatened. Circulation is more likely to be boosted by the most superficial superstar reporting tripe.[16]

Indeed does anyone in B.C. really believe that a dry background report to cabinet on proposed sales tax reform would "sell more newspapers" than tales of illicit Hollywood romances? Moreover, it is well known that traditional media are in dire financial straits (particularly newspapers, such as with Postmedia's bankruptcy, and I can attest that no journalist becomes affluent by filing FOI requests).

In 1997 the minister in charge of FOI administration in B.C. raised a furore when he complained that the FOI fee schedule was "an explicit subsidy to major media conglomerates," and asked "why should the taxpayer subsidize research" for the nation's largest newspaper chain?

I have at least seven responses to this complaint:

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[15] '*Lazy Journalists,'* by Mark Devenport. *The Devenport Diaries*. BBC News. Oct. 9, 2007

[16] *Cabinet briefings must be kept private to ensure sound advice*. Canberra Times, Nov. 25, 2007

(1) As noted above, media FOI requests often reveal government waste, spurring it to prevent or reduce such waste.

(2) Media FOI requests were intended to serve the public by providing it with vital information, and the higher fees then being planned would most impair not chains but smaller community, student, and alternative media who could least afford to pay them.[17]

(3) If government wanted to save money on the FOI process, it would stop resisting the release of records, up to Commissioner's inquiries and court challenges to overturn OIPC orders, with the attendant heavy legal fees (as often noted above).

(4) If government really worried about the cost of information processing, it would reduce its vast public-relations apparatus, which costs millions of dollars more annually than the FOI system. Costs also rise when PR branches labour upon "issues management" strategies in response to FOI record releases.

(5) Private corporations have at times been heavier users of the FOI law than media, yet government never publicly complains of the former applicant category, likely because such businesses' FOI usage creates no political embarrassments, and this despite the fact its usage is driven solely for private profit (often seeking records on their competitors' bids, contracts, etc.), unlike the media's, which at least in principle is co-mingled with the broader public interest.

(6) Government members often forget that their own party's research branch was often amongst the heaviest users of the FOI law when in opposition, and may be again after losing power – whereupon they would then be most grateful for a well-functioning *Act*.

(7) The government could save money on FOI costs by releasing more records routinely, and not advising the applicant to use the FOI route as a first resort (which is contrary to the intent of the *Act*). As well, time is money, and FOI request processing costs can rise when the records sought are so disordered that it takes officials longer to find them – hence better records management is advisable.

In sum, as Canadian Newspaper Association president Anne Kothawala put it: "Freedom of information is not about 'selling newspapers,' as some cynics allege. It's about real people, with real stories, and about real consequences on our lives. It's central to our way of life and the structure of rights and freedoms that underwrites it."[18]

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[17] *What Price Accountability? Funding cutbacks and the current financing of the B.C. Freedom of Information process (1997-2000),* by Stanley Tromp, 2000

[18] *Lobbying for your right to know*, by Anne Kothawala. Speech to the Ontario Club. *The Toronto Star*, Sept. 26, 2006

Appendix 10

Oral government and the vanishing public record

In 2007 two key source of information about the finances and management of the 2010 Vancouver Olympic Games were abruptly cut off. Minutes of the meetings of the B.C. 2010 Olympic and Paralympic Winter Games Secretariat (a branch of the B.C. Economic Development Ministry), the entity that politically oversees the Games, were once recorded, then no more. Samples of those minutes appear on pages 7 - 8.

For news stories, I had twice obtained hundreds of pages of minutes from the Secretariat through quarterly requests under the B.C. *FOIPP Act.* But in reply to my third identical attempt, I was told: “We have not located any records in response to your request.” A spokesman for the secretariat told the media, “The secretariat was keeping minutes but found they were not an effective management tool.” He added that the secretariat’s approach to keeping records is “consistent with cross-government practices and legislation.”

When the minutes were obtainable, it would take five months to receive them, and about one-third were blanked out, yet what remained still gave insight into the Games, which accounted for $2.5 billion of public funds.

In addition, VANOC was not itself covered by the B.C. *FOIPP Act,* but I used to obtain copies of the minutes of VANOC meetings that it had forwarded to the Secretariat, but then VANOC stopped forwarding those, so this tenuous supply route of information was cut off too.

A sample of VANOC minutes (a rarely seen bird indeed) appears on pages 9 -10. Consider the amount of detail we have lost.

The *Asian Pacific Post* editorial that follows is fairly representative of the media response.

MEETING NOTES

Group	2010 Partners' Meeting		
Attendees	Name	By Phone	
	Annette Antoniak Andrea Shaw Terry Wright Dave Rudberg Jim Godfrey Donna Wilson Dave Robinson Dorothy Byrne Renee Smith-Valade Gary Young for George Duncan Tewanee Joseph Emma Gibbons John Furlong	Bruce Dewar	
Guests	Christine Little Jane Burnes Burke Taylor Don Black		
Date	February 21, 2007	Time	8:00am (PST) 11:00am (EST)
Location	BC Secretariat – 7th Floor	Prepared by	Serena Innes

Agenda

1. Beijing Update
2. Update on Education
3. Adoption of the Agenda*
4. ICI Performance Tracker Update
5. Approval of Minutes from February 7, 2007*
6. Review of Action Items Summary*
7. Communications Announcements & Issues*
8. Travel Schedule*
9. Roundtable Discussion*
10. New Business*

Meeting Notes

1. Beijing Update

Christine Little and Jane Burnes from the BC Secretariat provided an update on Beijing and the BC-Canada Pavilion. A copy of the presentation was sent to all Partners prior to the meeting.

2. Update on Education

Burke Taylor and Don Black from VANOC gave a presentation/update on the Education program for the 2010 Olympics. The program will be an online interactive web based program with four key aspects in mind:

1. to provide every child an opportunity to engage in the Olympics
2. to provide teachers with resources
3. to showcase the best in BC and the best in Canada
4. to set a new standard for Olympic and Paralympic education

The website will be launched in September with a soft launch in May and will come out on a monthly basis.

ACTION: Annette to discuss with Minister Emery the opportunity to make an announcement.

3. Adopt the Agenda:

Motion: To adopt the agenda. **Carried.**

4. Approval of the Minutes:

Motion: To approve the minutes from the February 7, 2007 meeting. **Carried.**

5. Review of Action Items Summary

Venue Business Plans – there's a trust meeting scheduled for Friday. They're optimistic they will get the decision they asked for.

Master Planning Schedule – on the Partners agenda for March 7th.

First Nations Proposal (Pavilion) – FHFN is working on the next phase of the business plan and will provide an update in April.

ICI Performance Tracker. Donna gave an update and will bring forward on a quarterly basis. A copy of the update has been sent to all the Partners. Donna will also provide an evaluation of each of the commitments.

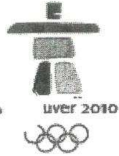
Partnerships Plan/Matrix. Will bring to next Partners on March 7th.

Non Commercial Use Agreement. Dorothy has answered all of the IOC's questions. Both Vancouver and Whistler are ready to sign. Once signed VANOC will set up briefing sessions for all the Partners.

Live Sites. They've had a couple meetings and will have a couple more prior to Burkes update on March 14th.

6. Communications Announcements & Issues

- Renee would like to give a broader perspective of announcements at one of the Partners meetings.
- Everyone should have a copy of the brief on the Sea to Sky Hwy. School closure. There is another one on Accommodation that should be going out shortly.
- Clock security has been extended from one week to two weeks. VANOC will be discussing with Omega how to manage it in future.
- John and Dorothy are heading to the Canada Winter games.
- VANOC is working with the Federal Secretariat on the Hillcrest Event.
- There is a workforce and partners ball hockey game taking place in the parking lot at the VANOC campus. Further information will be provided.
- The unveiling of the Aboriginal posters will take place on March 5th in the atrium.
- COCOM invites will be sent out in the near future. Is low key this year so should be taken off the Premier's calendar.
- Preparation for release of the business plan and sustainability plan is in the works.
- VANOC will make sure that athletes have the proper information on "Own the Podium" and are properly prepared for speaking engagements.



Confidential

DRAFT
VANOC
MINUTES OF THE MEETING OF THE FINANCE COMMITTEE
Location: Room 200 - 2nd Floor - VANOC Boardroom
3585 Graveley Street
Vancouver BC

Monday, March 12, 2007
3:00 PM – 5:35 PM

Committee Members Present:

Ken Dobell, co-Chair	Peter Brown	Jim Godfrey
Chief Gibby Jacob	Patrick Jarvis*	Michael Phelps*
Judy Rogers		

Regrets:
Annette Antoniak

Guests:
Jeff Mooney, VANOC, Director
Jaqueline Evans-Atkinson, Director of Finance, BC Olympic and Paralympic Games Secretariat
Jeff Garrad, BC Olympic and Paralympic Winter Games Secretariat
Paul Henderson, Olympic Operations Office, City of Vancouver
Rob Toller, 2010 Olympic and Paralympic Games Federal Secretariat

Staff:

John Furlong	Dorothy Byrne	Ken Bagshaw
Ward Chapin	Dave Cobb	Dan Doyle
John Eastman	David Guscott	Ron Holton
John McLaughlin	Rex McLennan	
Cathy Priestner Allinger	Donna Wilson (4:30pm)	Terry Wright
Todd Kobus	Shirley Shankar (recorder)	

**Participated by teleconference.*

These Minutes reflect the order of the Agenda.

Mr. Dobell called the meeting to order at 3:00pm.

1. **ADMINISTRATION**
   a) Approval of Agenda
   The agenda was approved as circulated.

   b) Approval of the Minutes of Finance Committee Meeting of February 5, 2007
   MOVED AND SECONDED THAT the minutes of the Finance Committee meeting held February 5, 2007 be approved as circulated.

CARRIED

2. VENUE DEVELOPMENT

a) Venue Development EVP Report (including allocation of contingency), Procurement Plan and Budget Summary

Management presented an overall venue development budget update, including status of program, schedule, risk register, contingency status and highlights of various projects including:

- Whistler Creekside Alpine Venue
- Whistler Sliding Center
- Whistler Nordic Competition Venue
- Cypress Mountain
- UBC Winter Sports Centre
- Richmond Oval
- Hastings Park
- Hillcrest Curling Venue
- Trout Lake and Killarney training venues
- Vancouver Olympic & Paralympic Village

It was noted that a detailed project analysis of the Whistler Athletes' Centre is ongoing and would be presented to the Committee at its next meeting. It was also noted that the Hastings Park forecasted completion budget showed a surplus of from the previous forecasted budget. s.21

The Committee was asked to approve a recommendation to the Board for approval of venue-specific budget transfers from contingency to cover current forecasts of costs at completion. After discussion by the Committee, the following resolution was **MOVED AND SECONDED:**

BE IT RESOLVED THAT the Finance Committee recommend to the Board that a total of be approved for transfer from the venue development central contingency account to the budget account for individual venues in the amounts shown below: s.21

Venue	Contingency Transfer	New Authorization
Whistler Sliding Centre		
Whistler Alpine Venue		
Cypress		
UBC Ice Hockey		
Richmond Oval		
Training Venues		
Whistler Nordic Centre		
TOTAL	s.21	s.21

s.21

AND THAT a total of is approved for transfer from the Hastings Park budget account to the venue development central contingency account, resulting in a net draw from the central contingency account of s.21

Secrecy and the 2010 Olympics

***The Asian Pacific Post*. Editorial**
April 22 2008

On Feb 11, 2008, the eve of the two year countdown to the 2010 Olympics, Premier Gordon Campbell took to the stage and proclaimed proudly to the people of BC; "these are your games"
.

What he did not say was that you, the people of BC have no right to know how your money will be spent on the games. Wrapping another cloak of secrecy around the games, the B.C. Olympic Winter Games secretariat, which manages public funds for the event, has stopped recording minutes of its meetings.

At the same time the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games aka VANOC, has stopped supplying the minutes of its meetings to the government secretariat. There is only one reason for this. Both VANOC and the secretariat do not want nosy reporters and members of the opposition from getting access to these minutes using the FOI process.

The minutes, blanked out in many sections and often delayed, were one of the few places the public was able to gauge and assess what was being planned for your money. The Canadian Taxpayers Federation believes the secretariat stopped keeping minutes to prevent access through Freedom of Information saying when "people find a way of getting information, those channels are shut down."

NDP Olympic Games critic, MLA Harry Bains said the secrecy surrounding the use of $2.5 billion of taxpayers' money is unacceptable. The secretariat said keeping the minutes were "not an effective management tool" whatever that means. The move it says is "consistent with cross-government practices and legislation." Translated, VANOC officials and the BC Government want you to believe their spin doctors.

The *Asian Pacific Post* and the *South Asian Post* are big supporters of the 2010 Olympic Games in Vancouver. We have always believed that the games will entrench Vancouver and its panoramic diversity on the global stage reaffirming its position as one of the best places to live on the planet.

However, the increasing secrecy surrounding the 2010 games is creating a credibility gap between VANOC and its supporters, let alone its detractors. Now with the minutes gone, the media and the public has to rely on oral governance of VANOC. That means if anything or anyone screws up, we will have to rely on hearsay on who authorized what and when.

There will be no raw records, except perhaps for carefully doctored final versions, to review the decision making processes involving $2.5 billion of taxpayer's money. The zeal for secrecy by VANOC is in defiance of the spirit of the Freedom of Information laws which was created to ensure transparency of governance.

If Premier Campbell is serious about accountability and this being the people's games, his government should order the secretariat and VANOC to keep meticulous records and minutes of all that transpires with the taxpayer's money. VANOC should not deprive the taxpayer of the transparency required for democracy to work.

Appendix 11

The dangerous diversion of faux transparency

> *If officials make public only what they want citizens to know, then publicity becomes a sham and accountability meaningless.* **-** Sissela Bok**,** Swedish philosopher, *Secrets*, 1982

Recent B.C. premiers have been enthusiastic advocates of the new era of digital government, such as with the posting of datasets of information online, as well as the use of social media like Twitter and Facebook. Yet the unexamined consequences to our FOI law must be understood.

About a decade ago, the B.C. government created DataBC, a catalogue of 2,500 data sets, while Conservative federal Treasury Board president Tony Clement hosted a so-called "Twitter town hall" to discuss using social media to make government more transparent. In all these discussions there was no mention of FOI law reform.

Of this latter event, Vincent Gogolek of the B.C. Freedom of Information and Privacy Association (FIPA) told CBC: "Everyone thinks it's so cool that the minister tweets, and talks about 'crowdsourcing' and other techie buzz, but it's like the government's saying: 'Look at the shiny new gee-gaws that we have here, and ignore the smell coming from the access to information system.'"

Over the decades we have faced many threats to the FOI system, but this one in a curious way may be amongst the most harmful of all. The other problems (e.g., subsidiary companies, oral government) remain recognizable as problems. But this one is so damaging because it convincingly passes as a solution to the open government dilemma while actually – and unnoticed - making it worse. Why? Because it can pacify or tranquillize the public with an illusion of transparency and empowerment, while its legal rights to obtain records through FOI laws are quietly regressing *at the same time*.

Yet a new deluge of self-selected and self-serving government internet fluff is no substitute for urgently needed FOI law reform. So, ironically, it may be that the pro-transparency rhetoric of open data activists is being dextrously exploited by governments for anti-transparency ends, making their efforts even worse than useless. The defense that this outcome was not the digital activists' intent makes it no less dangerous. (There is a positive alternative: if they focused their social media energies on mounting campaigns to gain needed FOI law reforms, this could indeed be a great public service.)

In most nations, as with this one, transparency advocates must wage hard uphill campaigns for at least two decades to have an FOI law passed - ever since B.C. NDP MP Barry Mather introduced the first draft FOI bill in Ottawa in 1965 - and then work over official obstructionism and in court battles to make it function – realities that most digital activists know or care nothing about. The mere fact that the state would so quickly and avidly embrace their "e-government" solutions

should be indicator enough to any politically aware person that this digital route signifies almost no concession of real power.[19]

With FOI advocacy, the road of least resistance is rarely the best one. Techno-utopians and digital-toy enthusiasts are dazzled and dazed by new technologies, first mistaking quantity of information for quality, then form for content, and finally the means for the ends. As one critic put it, "technology is now driving government policy, not visa versa." Contrarily, longtime FOI law advocates in their view may appear a little as outdated fogeys or Luddites.

One fatal delusion is that format alone somehow creates "value added" content. But common sense tells us that a B.C. cabinet report on a public disease risk that is 95 per cent blanked out due to a defective FOI law (such as with Section 13), and then all those blank pages are instantly posted to the B.C. Open Government website, or all the blogs and twitter feeds in the world, does not make readers a bit more informed as they gaze at their whited-out screens; such is a case of "garbage in, garbage out."[20]

As well, the online data set and social media solution is not nearly so democratic as its boosters claim, for (as Kwantlen University criminology academic Mike Larsen said) one needs technical expertise to process and understand data sets, expertise that much of the public does not have. Environmental activist Gwen Barlee also noted the limitations of generic data sets, insofar as they tell you what decisions were made, but not how, or why.

Furthermore, how many homeless persons can afford iPhones and laptops? Regarding this reality, although enhanced democracy was the professed goal, one may see a growing class split between the techo-rich and the so-called "techno peasants" - which ironically leads not to more socio-political equality, but less. [21]

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[19] This point was most starkly illustrated in Newfoundland in 2012 when the government eviscerated its FOI law in *Bill 29*. Then, during the debate on that bill, government members boasted as proof that "we are committed to openness" that they were starting a program to digitize and post historical deeds, and more - gift boxes of info-candy. Likewise, Ottawa's online posted datasets are mostly (felicitously named) "document dumps," useful for commercial data-miners or app developers, and a delight for trivial pursuit players everywhere, including, for instance, a registry of all Canadian civil aircraft, as well as a history of federal ridings since Confederation.

[20] Yet I concede to e-government advocates that not all new governmental online postings are entirely inconsequential; for example, in March 2015 the B.C. Legislature began posting MLA expense receipts. "We asked for this for six years and it finally happened," said the Canadian Taxpayers Federation.

[21] Ministers announce they democratically seek "input" on issues through social media. But where is evidence that they will be at all influenced by that public input, any more so than to the power-brokering of backroom lobbyists?

Moreover, *Vancouver Sun* reporter Chad Skelton explained that most of the database stories produced at the *Sun* were based on data sets that the newspaper had to obtain by FOI requests and not by governments' routine release (one reason being that it is difficult for governments to redact data sets to protect individuals' privacy), "and so we need the legal backstop of the FOI law." Many other news media outlets have reported the same. This fact alone confirms the far lesser value of the voluntarily posted datasets than FOI laws.

In sum, with such new-age “e-government,” we drift ever further from reality into the cyberspace fantasyland where all things appear possible with no effort (a perspective some FOI advocates may perceive as shallow and immature). Governmental social media and datasets would ideally be a useful supplement to, but not a substitute for, strong FOI laws, as a sugary dessert is advisable only after a full nutritious meal and not in place of it.

Appendix 12

Lessons from the UBC-Coca Cola contract dispute

In regards to B.C. *FOIPP Act* Sections 17 and 21, which were misapplied in the case below, free access to public-private partnership contracts is essential to the public interest. I became familiar with this topic, after waging a five-year legal battle to view the 1995 UBC-Coca Cola exclusive marketing contract while I was a student and working at the *Ubyssey* student newspaper. It was my first FOI legal dispute and a formative influence for my later cases.

Much was at stake because it was the first such exclusive public-private marketing deal with a public body in Canada, and I filed the first FOI request to view one; in such a partnership between the two sectors, the question arose - whose culture would prevail, that of corporate secrecy or public transparency?

UBC refused, I appealed to the OIPC, and voluminous arguments were made (while UBC assured us that “the contract itself is securely locked in a Chubb safe”). Then a disaster ensued. B.C. Information and Privacy Commissioner David Flaherty in Order 126 ordered the contact to remain sealed, accepting the university’s and companies’ Sec. 17 and 21 claims of financial and economic harms.

The *Ubyssey* appealed that order in judicial review in B.C. Supreme Court. We were widely expected to lose the case (and even I was not hopeful), for the power and funding was weighted so heavily on the other side. Yet we won after the newspaper’s lawyers demonstrated in court that at American universities, unlike those in Canada, such contracts are freely publicized even without FOI requests, and with no demonstrable harms incurring. The judge also stated the first commissioner should have, but did not, consider my pleas on Section 25, the public interest override.

Mr. Flaherty's term expired and he was succeeded by David Loukidelis in 1999, and a new inquiry was held. In his influential Order 01-20 of 2001, the new commissioner wrote the contract should be released because it contained information not *supplied* in confidence, but only *negotiated* in confidence between UBC and the company: "The parties, in effect, jointly created the records." (I believe the *Act* should be reformed to place this principle into Sec. 21(1)(b).) He also insisted on specific evidence for potential harms – of which none was produced - whereas his predecessor had just accepted bald assertions of harm from the company. Thus the landmark initial OIPC ruling was followed by a landmark reversal. Henceforth, no public body could withhold such contracts from the public. (UBC also repealed its much-criticized Policy 116, which gave its corporate partners too much influence in the FOI process.)

The matter then took a darker turn in three unexpected ways. In his submission to the first OIPC inquiry, UBC president David Strangway[22] promised that "almost all" of the contract's profits ($8.5 million over 10 years) would be spent on improving disabled access at UBC, and that my publicizing the contract by FOI might scuttle the contract and so imperil their funds – perhaps to induce guilt in the applicant (and at times almost succeeding) so as to dampen his efforts. Yet, five years later, I investigated and reported that UBC had spent *less than 10 percent* of the total contract profits on disabled access; and amongst the incidental beneficiaries, 21 percent - more than $1 million - had instead gone to the contract negotiating firm Spectrum Marketing (led by a former Coca-Cola vice president) – news that unsettled many readers.

There is an important principle in FOI work: negative old governmental habits die hard, and no single victory can be taken for granted: Two years after the Coca Cola contract was liberated from its Chubb safe, the ever intransigent UBC simply refused to accept that precedent, and so denied my later FOI requests to see its similar exclusive supply contracts with a bank, an airline, an internet provider, and Spectrum Marketing; hence I had to appeal in an inquiry *again*, whereupon the OIPC ordered those contracts opened also (in Orders 03-02, and 03-03, and 03-04). Such obstructionism on contracts is hopefully *passe* by now.

Then came fallout in Victoria. In 2006 the B.C. government tried to pass Bill 30 that would have exempted designated contracts and projects with private sector partners from FOI requirements *for 50 years* (a prospect unimaginable anywhere else in the world's FOI laws).[23] Concerted

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[22] The same President Strangway, who - reminiscent of several premiers - wrote in the *Vancouver Sun* (Dec. 5, 1985): "Above all, I want the university community and the public to feel that UBC is a place with no secrets and that information about it and its activities is open and accessible. . . If we apply that yardstick to the academic life of the university, why should it not apply equally to its administrative and business life?"

[23] The woeful *Bill 30* – which had no such statutory precedent in Canada – would have amended the B.C. *FOIPP Act*'s Section 21, so that the government must (not may) refuse to release information, for 50 years, that is "jointly developed for the purposes of the project," and that is "shared or jointly developed explicitly in confidence," and could harm "the negotiating position of the third party," along with other sorts of supposed harms. As *Vancouver Sun* noted, "This Bill is intended to erect a legislative framework around the Liberal experiments in having

opposition scuttled the bill. That proposal was not surprising, for public bodies such as UBC were obviously much displeased at the OIPC orders, and in 2004 the B.C. bureaucracy complained to a legislative FOI review that the commissioner's rulings which had opened up public-private business contracts had "undermined fair and open procurement processes that will result in the best deal for the province." The commissioner's aide refuted this claim and objected: "This serious allegation is a calculated appeal to politics, and we note that no particulars or evidence have been provided to support this sweeping claim."

At educational institutions, not all lessons are to be found in the classroom. In this onerous five-year UBC endeavour (a dispute that likely cost all sides a combined total of over $100,000 in legal fees), students learned to fight for their basic legal rights, including their rights to information. At the time, I was told our court appeal was belittled in senior UBC executive circles as "mischievous and doomed to fail." In the end, it was neither. The lesson was that on such points of principle - never give up.

Appendix 13

135 recommendations for reforms to the

British Columbia *Freedom of Information and Protection of Privacy Act*

and related transparency measures

Compiled and prepared by Stanley L. Tromp

My purpose here is to provide government transparency advocates with a resource base of 135 recommended reforms to the B.C. *FOIPP Act* of 1992. They can select from, modify, or add to these items as they choose, to create their own lists of preferred amendments, and these can also be adapted by other provinces.

I have tried to be as comprehensive as possible, to detail every needed amendment to the B.C. *FOIPP Act* that I could conceive of (pared down from my original 200 items), and have considered the widest range of sources collected over three decades. There are several explanatory notes to explain and bolster the recommendations. Those marked with an * are what I regard as the 15 most pressing items. Overall, I hope to have found some sort of balance here between (1) the ideal, and (2) the politically achievable.

private companies assume contractual responsibility for providing government services," that is, the so-called P3s. Many nations post such records online.

The Canadian sources are noted at the end of this file. The reader may find it helpful to print out or have open on a screen the most recent version of the B.C. *FOIPP Act* text (available at https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96165_00_multi) as a reference. – *S.T.*

***Recommendation #1**

Repeal the most negative features passed in Bill 22, the *Freedom of Information and Protection of Privacy Amendment Act (2021),* which are:

> ~ Sec. 3(3), that Part 2 of the *Act* does not apply to a record that does not relate to the business of the public body; • a record of metadata that (i) is generated by an electronic system, and (ii) describes an individual's interaction with the electronic system; • an electronic record that has been lawfully deleted by an employee of a public body and can no longer be accessed by the employee.
>
> ~ Sec. 33.1 A public body may disclose personal information outside of Canada only if the disclosure is in accordance with the regulations, if any, made by the minister responsible for this *Act*.
>
> ~ Sec. 27. That Sec. 43 allows the public body – upon the Commissioner's approval – to disregard a request if (c)(i) it is excessively broad, or (ii) is repetitious or systematic.
>
> ~ Sec. 75 (1), that the head of a public body may require an applicant who makes a request to pay (a) a prescribed application fee.

The B.C. *FOIPP Act* must also make it unmistakable clear the Premier's office is covered by the *Act* (which Bill 22 might have placed in doubt to some).

Section 12 - Cabinet records

Recommendation #2

Delete clause "or prepared for submission" from B.C. *FOIPP Act* Sec. 12(1). Sec. 12 should establish that documents may only be withheld if they were actually discussed by cabinet, not if they were only prepared for that purpose but never were. i.e., no record can be said to reveal "deliberations" if it was never actually deliberated upon. Sec. 12 should also be amended to clarify that "deliberations" only applies to the actual deliberations of Cabinet, not any other material.

(Such a new clause is regrettably necessary to stop a deleterious practice often observed in cabinet rooms in Commonwealth nations, whereby Cabinet members simply take documents

into Cabinet and then out again and claim an exemption - behavior which is now a perfectly legal way to circumvent disclosure obligations in most Canadian jurisdictions. In Australia, applicants have had FOI requests refused because documents were "prepared for submission to Cabinet (whether or not it has been so submitted).")

***Recommendation #3**

Add a harms test to Sec. 12, replicating the terms found in Scotland's FOI law, Sec. 30:

> Information is exempt information if its disclosure under this *Act*
>
> (a) would, or would be likely to, prejudice substantially the maintenance of the convention of the collective responsibility of the [Ministers]
>
> (b) would, or would be likely to, inhibit substantially (i) the free and frank provision of advice; or (ii) the free and frank exchange of views for the purposes of deliberation; or
>
> (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs

Two terms could be added from the FOI statute of Ghana, which prescribes in Sec. 6.(1)(c) that cabinet records are exempt that:

> [i] prejudice the effective formulation or development of government policy;
>
> [ii] frustrate the success of a policy by the premature disclosure of that policy;

At the bare minimum, the B.C. *FOIPP Act* should reflect the terms used in the FOI statute of the United Kingdom, on policy advice and cabinet confidences, Sections 35 and 36.

Recommendation #4

Sec. 12 should not apply to a document that contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of Cabinet. This would be somewhat more open than the terms now set in Sec. 12(2)(c).

(In the Newfoundland FOI law, such factual material can apparently be freed in any circumstances, for in Section 27. (1), "'cabinet record" means [….] (d) a discussion paper, policy analysis, proposal, advice or briefing material prepared for Cabinet, excluding the sections of these records that are factual or background material." In the FOI statute of the United Kingdom, in Sec. 35, once a cabinet decision has been made, "any statistical information used to provide an informed background to the taking of the decision" is not exempt.)

Recommendation #5

Amend Sec. 12(2) to state that the Sec. 12 exemption does not apply to Cabinet agendas or topic headings, including such examples as "items for discussion" and "legislation review."

(B.C. Supreme Court ruling 2011 BCSC 112 stated: “In my view, the conclusion of the OIPC delegate, that headings that merely identify the subject of discussion without revealing the ‘substance of deliberations’ do not fall within the s. 12(1) exception, was a reasonable decision.”)

Recommendation #6

Clearly mandate the principle of severability to Cabinet records. Implement recommendation 4-5 of the *ATI Act Review Task Force* report of the federal Treasury Board Secretariat, 2002: “That a prescribed format be developed for Cabinet documents that would allow for easy severance of background explanations and analyses from information revealing Cabinet deliberations such as options for consideration and recommendations.”

Recommendation #7

The time period during which Cabinet confidences cannot be disclosed via Sec. 12 should be reduced from 15 years to 10 years, as in Nova Scotia’s FOI law.

Recommendation #8

Proactively publish Cabinet minutes 15 years after their creation, and on the government internet, eventually moving to 10 years after their creation.

Recommendation #9

Add a provision to the B.C. *FOIPP Act* Sec. 12 to state that all decisions of the Cabinet along with the reasons thereof, and the materials on which the decisions were taken shall be made public within five years after the decisions have been taken and the matter is complete. Ideally these would be released proactively, not requiring B.C. *FOIPP Act* requests. Section 8(1)(i) of India’s *Right to Information Act 2005* provides a good example of such a clause.

Recommendation #10

In B.C. *FOIPP Act* Sec. 12, implement the advice of federal Commissioner John Reid in his 2002 report, to amend the *ATI Act* to clearly state that summaries of decisions are not considered Cabinet confidences once they are severed from other information which may reveal the substances of deliberations of Cabinet or one of its committees. The Act should also remove all potential uncertainties in the wording around cabinet documents, making it clear that they are defined solely by their substance, not by their titles.

(He noted: “Such summaries - e.g., Treasury Board circulars implementing decisions relating a new policy or budget reduction - should be routinely available to the public. All governments summarize Cabinet decisions in order to communicate these to the public or allow government institutions to implement the directions of Cabinet. Not all such summaries are made available to the public in press releases or other similar public documents.”)

Recommendation #11

Establish that Cabinet may choose to publish or grant access to information that is otherwise exempt under Sec. 12.

Recommendation #12

As FIPA advised in 2004, amend the B.C. *FOIPP Act* so that Sec. 12(3), which applies to local public bodies, has parallel provisions to Sec. 12 (2)(c) which applies to Cabinet confidences. The lack of similar qualifying language in Sec. 12(4) allows local public bodies to withhold background materials or analysis in conditions not allowed to Cabinet, and this omission should be corrected.

Section 13 - Policy Advice

***Recommendation #13**

Amend Sec. 13 with the wording of Article 19's *Model Freedom of Information Law*, 2001:

> 32. (1) A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to:
>
> > (a) cause serious prejudice to the effective formulation or development of government policy;
> >
> > (b) seriously frustrate the success of a policy, by premature disclosure of that policy;
> >
> > (c) significantly undermine the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views; or
> >
> > (d) significantly undermine the effectiveness of a testing or auditing procedure used by a public body.
>
> (2) Sub-section (1) does not apply to facts, analyses of facts, technical data or statistical information.

At a bare minimum, consider the harms test for policy advice records in Sec. 35 of the FOI law of the UK, Canada's parliamentary model, and South Africa (Sec. 44).

Recommendation #14

That Sec. 13 be amended to add a definition of "advice." It should also be clarified as to the type of sensitive decision-making information it covers and include a listing of those type of documents it specifically does not cover.

As well, clarify that "advice" and "recommendations" are similar terms often used interchangeably that set out suggested actions for acceptance or rejection during a deliberative process, not sweeping separate concepts.

Recommendation #15

That Sec. 13 be amended in order to restrict its application to advice and recommendations exchanged among public servants, ministerial staff and Ministers – that is, only information which recommends an actual decision or course of action by a public body, minister or government.

The federal MPs *Open and Shut* report of 1987 well advised that the *ATI Act*'s policy advice exemption "only apply to policy advice and minutes at the political level of decision-making, not factual information used in the routine decision-making process."

Recommendation #16

Clearly mandate the principle of severability to all policy advice records. (This should be stated at the start of the exemptions portion of the *Act*, for all exemptions, but might need to be reiterated here.) A prescribed format should be developed for Sec. 13 documents that would allow for easy severance of exempt from releasable non-exempt material.

***Recommendation #17**

Amend B.C. *FOIPP Act* Sec. 13 to include a section on the model of Quebec's FOI law Sec. 38, whereby the B.C. government may not withhold policy advice records after the final decision on the subject matter of the records is completed and has been made public by the government.

If the record concerns a policy advice matter that has been completed but not made public, the B.C. government may only withhold the record for two years.

If the record concerns a policy advice matter that has neither been completed nor made public, the B.C. government may only withhold the record for five years - on the model of Nova Scotia's FOI law, Sec. 14.

> (In 2015 the federal Information Commissioner advised "reducing the time limit of the exemption for advice and recommendations to five years or once a decision has been made, whichever comes first.")
>
> *Also see Appendix A, below, regarding the Dutch FOI protection for policy analysts*.

<u>Sec. 14 – Legal Affairs</u>

The B.C. *FOIPP Act's* Sec. 14 reads in full: "The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege."

Recommendation 18

Solicitor-client privilege, in terms of advice given to public bodies by officials who also just happen to be lawyers, acting in their policymaking and statute-designing roles, was not intended to be protected to the same degree as solicitor-client privilege in litigation or law enforcement matters. This must be made clear in an amended B.C. *FOIPP Act,* that the former matters are not "legal advice," and should instead be dealt with instead in Sec. 13, the policy advice exemption.

The specificity in Quebec's FOI law is helpful in interpretations: "31. A public body may refuse to disclose a legal opinion concerning the application of the law to a particular case, or the constitutionality or validity of legislative or regulatory provisions, or a preliminary or final draft of a bill or regulations." This is valid only if this opinion does not constitute policy advice, as per B.C. *FOIPP Act* Sec. 13.

(Overall, for the B.C. *FOIPP Act* Sec. 14 legal affairs exemption, the main issue is the wide scope rather than the absence of harm; if the scope is narrow, then harm can largely be presumed, although a time limit and public interest override are also important. This exemption should be mainly restricted to legal or administrative proceedings, and designed to ensure a fair trial.)

***Recommendation #19**

Amend Sec. 14 to state that the exemption cannot be applied to records under legal privilege 30 years after they were created, per the model of the UK FOI law's Sec. 43. Better yet, the American *FOIA* sets a 25 year limit for such records.

(On time limits, federal Information Commissioner John Reid well wrote: "It has been obvious over the past 22 years that the application and interpretation of [the legal affairs *ATI Act* exemption] by the government (read – Justice Department) is unsatisfactory. Most legal opinions, however old and stale, general or uncontroversial, are jealously kept secret. Tax dollars are used to produce these legal opinions and, unless an injury to the interests of the Crown can reasonably be expected to result from disclosure, legal opinions should be disclosed.")

***Recommendation #20**

Add a harms test to Sec. 14, to state the exemption can only be applied to withhold records prepared or obtained by the agency's legal advisors if their release could reveal or impair procedural strategies in judicial or administrative processes, or any type of information protected by professional confidentiality that a lawyer must keep to serve his/her client. Sec. 14 should be limited to a litigation privilege or matters which would be privileged from production in legal proceedings.

(Politicians sometimes summon a lawyer to merely sit in on a closed door meeting to listen, and then term his or her presence "legal advice." Lawyers also fight to keep secret their

taxpayer-funded legal billing figures, claiming solicitor-client privilege on this point, even after all appeals are finished, and the B.C. *FOIPP Act* should prohibit this.)

Recommendation #21

In its brief to the Senate on Ottawa's *Bill C-58*, the Quebec journalists' federation noted a special problem in the *ATI Act*, which should be blocked in a reformed B.C. *FOIPP Act*:

"Our members' experience in Quebec is instructive; government bodies have a tendency to add the names of lawyers or notaries to distribution lists on documents, so they are able to refuse to disclose the documents, citing solicitor-client privilege. The Commission d'accès à l'information, which makes review decisions in Quebec, has stated that in order to assert solicitor-client privilege, there had to be a relationship with a client; the mere fact of including the name of a lawyer or notary in a distribution list does not create that relationship. Solicitor-client privilege is not a catch-all concept for camouflaging documents."

Recommendation #22

Add a clause to the B.C. *FOIPP Act* Sec. 14 that information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

Section 16 - intergovernmental relations

Recommendation #23

Amend Sec. 16 - "Disclosure harmful to or negotiations" - to state that information may be withheld "where there is an implicit or explicit agreement or understanding of confidentiality on the part of both those supplying and receiving the information, and where disclosure would cause serious harm based on reasonable expectations of secrecy."

Recommendation #24

Amend Sec. 16 to state that, if the Canadian public body wishes to apply this exemption, it must first consult with the other government to ask if it would object to disclosure of the records, as likely to cause "serious harm based on reasonable expectations of secrecy," not just unilaterally claim that it would do so without inquiring.

Recommendation #25

Amend the B.C. *FOIPP Act* to read: "16. (4) The head of a government institution shall disclose any record requested under this Act that contains information described in subsection (1) if the government, organization or institution from which the information was obtained (a) consents to the disclosure; or (b) makes the information public."

Sec. 25 - The Public Interest Override

Recommendation #26

Clearly establish in the B.C. *FOIPP Act* Sec. 25 that there shall be no consideration of temporal urgency in applying a public interest override.

(The B.C. Information and Privacy Commissioner considered this question in a report of 2015. After the environmental disaster at the Mount Polley mine tailings pond dam, she received complaints that the provincial government had failed to proactively release data on the risks, before the event, per *FOIPP Act* Sec. 25, public interest override. She advised "that Section 25(1)(b) be re-interpreted to no longer require an element of temporal urgency for the disclosure of information that is clearly in the public interest.")

Recommendation #27

B.C. *FOIPP Act* Sec. 25 (1) commendably mandates the immediate release of records: "(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or (b) the disclosure of which is, for any other reason, clearly in the public interest."

Yet other features in several national FOI laws could be considered for addition to the Sec. 25 override (while emphasizing such a list is not exhaustive):

- a contravention of, or a failure to comply with a law or regulation
- an imminent and serious threat to the prevention of disorder or crime or the protection of the rights or freedoms of others
- (a) a miscarriage of justice; or (b) significant abuse of authority or neglect in the performance of official duty; injustice to an individual; (c) danger to the health or safety of an individual or of the public; or (d) unauthorised use of public funds
- ignoring regulations, unauthorized use of public resources, misuse of power, and other related maladministration issues.
- consumer protection (and this factor should be added to the B.C. *FOIPP Act*'s override in Sec. 21 on third party business secrets)
- it concerns urgent cases threatening public security and health, as well as natural disasters (including officially forecasted ones) and their aftermaths
- it presents the overall economic situation of the nation

Recommendation #28

Consider adding to the B.C. *FOIPP Act* these terms in Mexico's FOI law: "14. Information may not be classified when the investigation of grave violations of fundamental rights or crimes against humanity is at stake."

Recommendation #29

Place in the B.C. *FOIPP Act* these principles in Article 19's *Model Freedom of Information Law*, 2001:

> Notwithstanding any provision in this Part, a body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest outweighs the public interest in disclosure.

Article 19 also asserts that the bar should not be set high to apply the override: "Disclosure should not need to be vital in the public interest; rather, the public interest in disclosure should just outweigh the interest in secrecy."

Recommendation #30

The override in the Australian FOI law below is rather limited, yet some provisions below help shore up whatever is there. While it seems regrettable that such (perhaps) self-evident points are necessary to assert, this may stem from political realism and experience. These might be considered for the B.C. *FOIPP Act* Sec. 25:

> Irrelevant factors – 11A (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
>
> (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
>
> (b) access to the document could result in any person misinterpreting or misunderstanding the document;
>
> (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
>
> (d) access to the document could result in confusion or unnecessary debate.

Recommendation #31

Encourage the Commissioner to devote a chapter of his annual report to note serious cases of failure where the government and agencies had an obligation to proactively disclose information in the public interest per B.C. *FOIPP Act* Sec. 25 (whether or not an FOI request for access was made), but did not. Seek and consider input on further measures to guarantee the Sec. 25 duty of proactive publication.

<u>Section 3 (7) – the B.C. *FOIPP Act* and other statutes</u>

B.C. *FOIPP Act* Sec. 3(7) [formerly Sec. 79] reads: "If a provision of this *Act* is inconsistent or in conflict with a provision of another *Act,* this *Act* prevails unless the other *Act* expressly provides that it, or a provision of it, applies despite this *Act.*"

Recommendation #32

Whereas the B.C. *FOIPP Act*'s existing exemptions afford adequate protection for all legitimate secrets, delete the *Act*'s Sec. 3(7), and so render this *Act* supreme on disclosure questions.

Recommendation #33

If that is not accepted, there is a secondary option (which FIPA advised in 2005): Extend coverage to categories of records exempted by "notwithstanding clauses" in other statutes.

Recommendation #34

If the courses on Sec. 3(7) above are not accepted, then at the very least mandate that an all-party committee study the necessity of each paramountcy clause in other Acts that override the B.C. *FOIPP Act,* with a view to repealing or amending those clauses.

Recommendation #35

If B.C. *FOIPP Act* Sec. 3(7) is retained, prescribe in the law at a minimum that the B.C. Information and Privacy Commissioner must be consulted when new overrides are to be added, to note where the information would not be protected by a general exemption that already exists in the B.C. *FOIPP Act*. Consider granting the Commissioner the power to veto such an addition.

Recommendation #36

Even if Victoria does not wish to delete B.C. *FOIPP Act* Sec. 3(7), it can be noted that even Ottawa recognizes such a section's problematic nature, in the Justice Department of Canada's *A Comprehensive Framework for Access to Information Reform: A Discussion Paper*, 2005. At the barest minimum, this advice therein should be implemented:

"In relation to the second issue, that of future additions to [*ATI Act* Sec. 24's schedule], the Government believes that criteria should also be adopted. These could include: whether the Government institution has a demonstrable and justifiable need to provide an iron clad guarantee that the information will not be disclosed. The Government shares the opinion of the Task Force that the standard to be met for Section 24 [the equivalent of B.C. *FOIPP Act* Sec. 3(7)] protection should be very high. In addition to meeting the criteria, therefore, the government institution seeking to add a confidentiality provision to Schedule II should be required to justify why the information in question cannot be adequately protected by the other exemptions in the *Act*."

Recommendation #37

Consider the advisability of Antigua and Barbuda's FOI law, Sec. 6(3): "Nothing in this *Act* limits or otherwise restricts the disclosure of information pursuant to any other law, policy or practice."

Recommendation #38

Amend the B.C. *FOIPP Act* to allow other forms of Sec. 23 notice - public notice or advertisement - whenever substituted notice is likely to be effective, practical and less costly than direct notice.

(So advised in the 1987 MPs *Open and Shut* report and Commissioner John Reid's 2002 report. The latter explained that in the *ATI Act*, institutions must give direct notice to and consult with third parties before records may be released. This adds very long delays; and often there are so many of these third parties - in one case he noted *126,000* of them – that direct notice is simply impractical, and so departments take the path of least resistance and simply refuse to disclose the records.)

***Recommendation #39**

The B.C. *FOIPP Act* reads: "21 (1) The head of a public body must refuse to disclose to an applicant information [….] (b) "that is supplied, implicitly or explicitly, in confidence." Add the clause: "Information negotiated in confidence is not exempt from disclosure."

(In his landmark order Order 01-20, the B.C. Information and Privacy Commissioner ruled that the UBC-Coca Cola contract should be released, despite Sec. 21, because it contained information not *supplied* in confidence, but only *negotiated* in confidence between UBC and the company: "The parties, in effect, jointly created the records." This worthy principle needs to be placed in the *Act*.)

Recommendation #40

Add these terms to the B.C. *FOIPP Act*, from Justice Gomery's report *Restoring Accountability*, 2006:

Definitions: '"trade secret" means any information, including a formula, pattern, compilation, program, device, product, method, technique or process (a) that is used, or may be used, in business for any commercial advantage; (b) that derives independent economic value, whether actual or potential, from not being generally known to the public or to other persons who can claim economic value from its disclosure or use; (c) that is the subject of reasonable efforts to prevent it from becoming generally known to the public; and (d) the disclosure of which would result in harm or improper benefit to the economic interests of a person or entity.'"

Scope of Coverage

[**Background:** Sec. 46 (d)(iv) of Bill 22 states the minister may add subsidiaries or other entities to FOI coverage, if he/she "determines that it would be in the public interest." We may note this is, at least, some kind of response from Victoria to persistent public objections on the subsidiary problem, hitherto ignored. But there is, of course, a world of difference in law between "may" and "must." In actual fact, if coverage is ever applied to the $500 million InBC Investment Corp. - where it is most needed - this move would be surprising but always welcome. This wholly discretionary new section was likely designed to create the illusion of solving the subsidiary problem without actually doing so, and thus push it all off the public's agenda. If that is the case, then the section's net effect is to be worse than useless – and hence the measures below.]

Recommendation #41

Extend the coverage of the B.C. *FOIPP Act* to all offices and branches of the Legislature.

***Recommendation #42**

The entities below would be designated a "public body" in B.C. *FOIPP Act* Schedule 2

(a) any institution that is controlled by a public body, at any ownership level, or

(b) performs a statutory function, or

(c) is vested with public powers; or has a majority of its board members appointed by a public body, or

(d) is 50 percent or more publicly owned via its shares[24] (including InBC Investment Corp.)

The entities below would not be designated a "public body" in Schedule 2, *per se,* but their records would be accessible by the FOI law only to the extent of their public functions, if:

(e) they perform a public function – after this term is considered and carefully defined

(f) where public funding in effect covers 50% of regular operational costs, whatever the formal nature of the flow of funds (e.g., if the operational costs are funded by grants or other)

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[24] Regarding (d), it is absolutely crucial that such entities be at least 50 percent publicly owned, and not "fully owned," for if the latter course was the law, the government could just sell off 5 percent of the entity and still own the remaining 95 percent, as a dexterous way to escape FOI coverage. In fact, it might best be set to a degree less than 50 percentage, since in some cases 20 percentage ownership could mean control. e.g., the South African FOI law assumes control with 20 percent ownership although that can be defeated if control is not in fact present. Obviously one controls with 50 percent but often control is present at much lower levels.

(For purposes of this *Act*, a private body includes any body, excluding a public body, that: – (a) carries on any trade, business or profession, but only in that capacity; or (b) has legal personality.)

Recommendation #43

There are more details below to flesh out the criteria above, which need to be placed in the B.C. *FOIPP Act*:

- institutions having the power to establish regulations or standards in an area of B.C. jurisdiction

- institutions responsible for carrying out an important public policy on behalf of the government; or it performs functions or provides services pursuant to federal statute or regulation

- statutory boards, tribunals, agencies and commissions

- nationalized industries

- non-departmental bodies or quangos (a British term for quasi non-governmental organizations)

- consulting firms, research institutes and universities under contract with government, but only to the extent of their public duties; or the B.C. *FOIPP Act* should deem that all contracts entered into by scheduled institutions contain a clause retaining control over all records generated pursuant to service contracts.

- government institutions, including Special Operating Agencies, and all present and future public foundations

- any entity that provides under contract with a public authority any service whose provision is a function of that authority

- agencies whose capital stock forms part of the domain of the State

- if public institutions are exclusively financed out of a Consolidated Revenue Fund, they should be covered. Agencies that are not financed exclusively in this way, but can raise funds through public borrowing should be included, with the major determinant being their degree of government control

- an entity covered entity should be covered if owned totally or partially or controlled or financed, directly or indirectly, by public funds, but only to the extent of that financing

- An entity should be covered if it carries out a statutory or important public function or a statutory or public service, but only to the extent of that statutory or public function or that statutory or public service.

Recommendation #44

Student societies and student governments of post-secondary public educational entities should be covered by the B.C. *FOIPP Act.* *(*See Appendix 8 of Tromp's report *A Right Under Siege* for an in-depth explanation.*)*

Recommendation #45

The B.C. *FOIPP Act* should be amended to cover any entity in which a majority of its governing board members are appointed by government or a minister - or if not so appointed, in the discharge of their duties are public officers or servants of the Crown - it or its parent is directed or managed by one or more persons appointed pursuant to statute.

Recommendation #46

Consider the proposal of Article 19, that private bodies themselves should also be included if they hold information whose disclosure is likely to diminish the risk of harm to key public interests, such as the environment and health. Inter-governmental organizations should also be subject to FOI regimes based on the principles enunciated above.

Recommendation #47

The B.C. *FOIPP Act* states in Sec. 3(1): "This Act applies to all records in the custody or under the control of a public body." Clearly and explicitly define these legal terms in the statute., i.e., what exactly is record "custody" and "control."

Recommendation #48

Render it unlawful in the B.C. *FOIPP Act* to store records offsite - or at a site owned by a private company partnering with government – so as to claim these are not in the state's "custody" and cannot be accessed.

Emulate Quebec's FOI law on this issue: "1.1. This Act applies to documents kept by a public body in the exercise of its duties, whether it keeps them itself or through the agency of a third party."

Recommendation #49

The B.C. *FOIPP Act* should set that all contracts entered into by scheduled institutions contain a clause retaining control over all records generated pursuant to service contracts. Implement this

proposal from the federal Treasury Board Secretariat, in *Access to Information: Making it Work for Canadians. ATIA Review Task Force* report, 2002:

> 3-3. That 'the government's Policy on Alternative Service Delivery be amended to ensure that arrangements for contracting out the delivery of government programs or services provide that: records relevant to the delivery of the program or service that are either transferred to the contractor, or created, obtained or maintained by the contractor, are considered to be under the control of the contracting institution; and the *Act* applies to all records considered to be under the control of the contracting institution, and the contractor must make such records available to the institution upon request.

Recommendation #50

The question arises on who should have the authority to determine what entities must be covered according to the criteria, and how. The B.C. Information and Privacy Commissioner should have this authority; and amendments to the B.C. *FOIPP Act* should create the right for any person to make a complaint to the Commissioner if the government fails to add any particular government institution or institutions to FOI coverage, similar to the proposal in the federal Commissioner's *Blueprint for Reform*, 2001:

> The mechanism which is recommended is this: Cabinet should be placed under a mandatory obligation to add qualified institutions to Schedule I of the *[ATI] Act.* Any person (including legal person) should have the right to complain to the Information Commissioner, with a right of subsequent review to the Federal Court, about the presence or absence of an institution on the *Act*'s Schedule I. As at present, the Commissioner should have authority to recommend addition to or removal from the Schedule and the Federal Court, after a *de novo* review, should have authority to order that an institution be added to or removed from the Schedule.

***Recommendation #51**

Amend the Act so that government and public agencies must post all P3 partnership and large supply and service contracts on their websites within one week of their finalization - except for small portions where genuine commercial confidentiality or other legitimate interests may be protected, and only per B.C. *FOIPP Act* exemptions, which may be appealed to the OIPC. At the very least, they should be released routinely (when appropriately redacted) upon request, without an FOI application required.

Recommendation #52

Consider adding South Africa's FOI legal provision (which is also set in that nation's Constitution) that allows individuals and government bodies to access records held by private bodies when the record is "necessary for the exercise or protection" of people's rights.

Recommendation #53

The B.C. *FOIPP Act* should be amended to provide that an agency, board or commission may not be removed from compliance with the *Act* by virtue of changing its name but continuing to perform the same functions.

Recommendation #54

Amend the B.C. *FOIPP Act* so that the B.C. government may not enter into a "shared jurisdiction" arrangement or contract, or create a new institution with national, provincial, municipal or other governmental co-partners, unless the records of that arrangement, etc., are available under a freedom-of-information law of at least one of the partners.

(By far the most intransigent problem is that dozens of Canadian entities have a "shared jurisdiction" amongst federal, provincial and other governments; since it is claimed that these bodies do not fit the within scope of any one partner's FOI laws, they fall between the cracks and are covered by none. A good example of such an FOI-exempt entity is the First Nations Health Authority, a B.C.- federal partnership.)

Recommendation #55

Create a special schedule of which named entities qualify as an "aboriginal government," while criteria for this should be added also.

Duty to document, and record retention

[**Background:** The disastrous trend towards "oral government" – whereby government officials do not create or preserve records of their decisions or policy development because they do not wish such records to be ever made public through the FOI process – is growing each year. The *Information Management Act* passed by NDP in 2019 does not create a true "duty to document" government actions and decisions, despite the government's voluble claims; it mere gives the Chief Information Officer the *discretion* to bring in "directives and guidelines" on the creation of adequate records.

When in opposition, the NDP's private member's *Bill M-207* of 2016 stated: "Every public body and service provider *must* create and maintain full and accurate records of government information." (Italics mine.) The party, when running for election in 2017, in response to a questionnaire to FIPA, promised "to create a positive duty to document government actions for greater accountability to the public." Yet this was never done. This inaction counters the advice of the B.C. Information and Privacy Commissioner, past Legislative Special FOIPP Committee reviews, and many others.]

***Recommendation #56**

The Government should adopt legislation *mandating* public servants to fully document governmental functions, policies, procedures, decisions, recommendations, essential

transactions, advice, and deliberations. Make it an offence to fail to do so or to destroy documentation recording decisions, or the advice and deliberations leading up to decisions. It includes records of any matter that is contracted out by a public office to an independent contractor.

This requirement would ideally be placed in a new comprehensive B.C. *Information Management Act* (rather than the failed *Act* passed in 2019 with its discretionary rules, a law which should be repealed as the new statute replaces it). The new B.C. *Information Management Act* should apply to every entity covered by the B.C. *FOIPP Act.*

Details would be worked out in policy at a ministry, even program, level. Government should consider adopting a risk-based approach, with the nature and significance of decisions, actions and transactions being used to determine which records have to be documented and in what manner. There should be a (non-exhaustive) list of examples of records to be generated. The Information and Privacy Commissioner must be granted authority over this new *Act*, with the powers to ensure compliance with it.

Recommendation #57

The body responsible for archives would develop, in coordination with the Information and Privacy Commissioner, a records management system which will be binding on all public authorities. Such codes should be developed in consultation with public bodies and then laid before the Legislature.

Recommendation #58

Implement these terms in a new B.C. *Information Management Act* taken from Article 19's *Principles of Freedom of Information Legislation*, 1999, endorsed by the United Nations:

> Destruction of records - To protect the integrity and availability of records, the law should provide that obstruction of access to, or the willful destruction of, records is a criminal offence. The law should also establish minimum standards regarding the maintenance and preservation of records by public bodies. Such bodies should be required to allocate sufficient resources and attention to ensuring that public record-keeping is adequate. In addition, to prevent any attempt to doctor or otherwise alter records, the obligation to disclose should apply to records themselves and not just the information they contain.

Recommendation #59

In Canada and most nations, records are primarily catalogued for the government's convenience, not for the public's scrutiny. The only provincial FOI law that prescribes record management to assist applicants is that of Quebec, in Sec. 16, and this should be considered for a reformed B.C. *FOIPP Act:*

> 16. A public body must classify its documents in such a manner as to allow their retrieval. It must set up and keep up to date a list setting forth the order of classification

of the documents. The list must be sufficiently precise to facilitate the exercise of the right of access.

(This factor is present in the FOI laws of many nations also, such as with India's law: "4. Every public authority shall – (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act." The African Union's *Model Access Law* of 2013 prescribes that officials must "arrange all information in its possession systematically and in a manner that facilitates prompt and easy identification" and "keep all information in its possession in good condition and in a manner that preserves the safety and integrity of its contents.")

***Recommendation #60**

- Include a provision in the B.C. *FOIPP Act* that all emails and communications sent from the personal email addresses and from the work email addresses of employees, directors, officers, and contractors, and which relate directly or indirectly to workplace matters, are subject to the access law.

- Ban public officials using private email accounts, personal cell phones and tablets for carrying out government business. The B.C. *FOIPP Act* should be amended to include electronically stored information (e.g. voice-mail, E-mail, computer conferencing etc.) explicitly in the definition of recorded information, and to give requesters the right to request a record in a particular format if it exists in various formats.

- Legislation should advise access officials to keep up-to-date on the latest information and communication technologies, so as to watch for and thwart any back-channel evasions of FOI obligations.

(The federal Commissioner released a policy statement which expressly includes any form of instant messaging under the definition of records. This applies to phone-based messaging services like SMS and BBM, online messaging services like Facebook, as well as dedicated messaging apps like WhatsApp. Yet in this digital age, FOI law and policy always struggle to keep up with lightning-paced technological changes.)

Recommendation #61

A common tool of FOI avoidance is for Canadian officials and politicians to use post-it sticky notes to avoid a paper trail - an intolerable breach of the public interest.

Amend the B.C. *FOIPP Act* to add this wording of British Columbia's FOI regulations, which state that any marginal note made upon a document transforms that record into "a new record," and a separate copy is made of it for FOI applicants: "Marginal notes and comments or 'post-it' notes attached to records are part of the record, not separate transitory records. If the record is requested, such attached notes are reviewed for release together with the rest of the record."

Recommendation #62

In some jurisdictions, records may not be destroyed after an FOI request for them has been received, even if they had already been scheduled for destruction. For instance, in Washington state's FOI law, "If a requested record is scheduled shortly for destruction, and the agency receives a public records request for it, the record cannot be destroyed until the request is resolved. Once a request has been closed, the agency can destroy the requested records in accordance with its retention schedule." This measure is advisable for the B.C. *FOIPP Act*.

Recommendation #63

The FOI statute of Ecuador commendably goes one step better, wherein "information cannot be classified following a request." This measure is advisable for the B.C. *FOIPP Act*.

Recommendation #64

Federal information commissioner John Grace issued a sharp rebuke to the oral government concept, noting its origins: "The misguided effort to avoid scrutiny by not making records is driven by ignorance of the law's broad exemptive provisions."

This last point is crucial, and the solution to such ignorance is to begin an education program for all officials and public servants about how the B.C. *FOIPP Act* exemptions work, exactly what information can be legally withheld, and why the FOI law need not be so feared.

The Information and Privacy Commissioner's Powers

Recommendation #65

Under the federal *Access to Information Act* Sec. 31, applicants have within 60 days of receiving an unsatisfactory response from the public body, to appeal to the Information Commissioner about delays, exemptions, or any other issue. This 60 day limit should also set in the B.C. *FOIPP Act,* instead of its current 30 days. (The *ATI Act*'s limit was shortened in 2006 from a right to appeal within one year. Six months to appeal would be a fair compromise between the two, and this limit might be set in the B.C. *FOIPP Act.)*

The deadline to file an appeal of a FOIPP ruling to Judicial Review should also be doubled to 60 days (as the JR process can be complex and onerous to a layperson).

Recommendation #66

Amend the B.C. *FOIPP Act* so that upon the conclusion of an investigation, the Commissioner's office will have the power to recommend to the Attorney General's office that it lay charges and fine public bodies for obstructive behaviour where warranted and/or to impose costs on public

bodies in relation to the appeal. (These amounts will be determined in further amendments or regulations.)

Recommendation #67

Amend the B.C. *FOIPP Act* to grant the Information and Privacy Commissioner the power to require public bodies to submit statistical and other information related to their processing of requests, in a form and manner that the Commissioner considers appropriate.

(The federal Commissioner well noted in 2021: "In Scotland, statistics are gathered every three months through a computer system rather than compiled once a year in an annual report; this allows them to promptly assess trends and institutions' performance. This method of data collection also makes it possible to take action quickly and as needed, something that is not possible in our current access regime." This is advisable for B.C.)

Recommendation #68

The B.C. Information and Privacy Commissioner should be given powers in the B.C. *FOIPP Act* to require systemic changes in government departments to improve compliance (as in the United Kingdom).

Response times

[**Background**: The most common initial FOI response time in other nations' FOI laws is two weeks – *half* the 30 day period allowed for the initial response in the B.C. *FOIPP Act*. Of 128 nations, 92 set an initial response time ranging from three to 21 days. For the extension limit, 58 nations set from three to 21 days, whereas 29 countries set 30 days. Some FOI laws also have penalties for delays, which the B.C. *FOIPP Act* needs.]

***Recommendation #69**

For the B.C. *FOIPP Act*, set a 20 day initial response limit for records – the standard in the FOI laws of Quebec, New Zealand, the United Kingdom and the United States. Also replicate the 10 day FOI extension limit in Quebec's statute.

Recommendation #70

Restore the term calendar days – as it was initially in the B.C. *FOIPP Act* – in place of "working days," in regards to response and appeal times.

***Recommendation #71**

The B.C. *FOIPP Act* should be amended to prohibit the use of any discretionary exemption if the department is in a deemed refusal situation due to delays. In this situation, it would be required

to gain the approval of the Commissioner before withholding isnformation under mandatory exemptions (the standard in Mexico).

(At a minimum, Commissioner John Reid's 2002 report well advised that the *ATI Act* be amended to preclude reliance upon the policy advice and legal privilege exemptions [i.e., the B.C. *FOIPP Act*'s Sec. 13 and 14] in late responses. "It would have every bit as much force, without risking highly damaging disclosure, if it were restricted to loss of the ability to invoke [these two] sections in late responses. These two sections are discretionary and protect the internal, advice-giving process. A sanction so limited would pinch where the pinch is needed.")

Recommendation #72

Amend the B.C. *FOIPP Act* to mandate that when a department's response falls into deemed refusal (i.e., failure to meet lawful deadlines), it loses the right to collect fees, including any search, preparation, and copying charges.

Recommendation #73

Under no circumstances may a third party notification excuse the public authority from complying with the time periods established in the B.C. *FOIPP Act*.

Recommendation #74

For the B.C. *FOIPP Act*, implement this recommendation from *Observations and Recommendations* by federal Commissioner Carolyn Maynard, 2021: "The *[ATI] Act* should provide a clearer process for institutions that decide to have a consultation and set out a maximum length of time for consultations required in order to respond to access requests."

(This is necessary because, as Commissioner Maynard noted, as long as a consultation is under way, institutions generally will not respond to an access request, even though there is nothing to stop them from doing so under the *Act*. The OIC's investigations show that institutions rarely decide to disclose information without having a consultation when the information concerns other institutions. As a result, requesters are frequently denied timely access to requested records, in whole or in part.)

Recommendation #75

Amend the B.C. *FOIPP Act* so that where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, or for public health emergencies, a response must be provided within 48 hours. (This term appears in many nations' FOI laws, and in Afghanistan and Nepal such information must be provided within 24 hours.)

Recommendation #76

Whereas the worst delay bottleneck is often at the "sign off authority" levels and processes, these must be streamlined and simplified. Hence amend of the B.C. *FOIPP Act* to vest such authority at the lowest reasonable level, normally with the information officer if there is one.

On the extension of time limits, restrict the delegation of granting time extensions to a senior official, perhaps at Assistant Deputy Minister level, with the hopes of increasing the accountability for institutions' FOI performance.

Recommendation #77

Amend the B.C. *FOIPP Act* to state that information releases may never be delayed due to public relations concerns or consultations, such as pre-release "issues management" or "spin control" plans.

(Public relations staff need not be prohibited from being informed about B.C. *FOIPP Act* requests - in reality this could likely not be stopped anyways - but only if this process does not cause delays, or breach the applicant's privacy.)

Recommendation #78

Amend the B.C. *FOIPP Act* to state that records will be granted to applicants in staged releases if they request it. That is, if any portion of the information requested can be considered by the information officer within the time period specified, it must be reviewed and a response provided to the requester.

(The federal Treasury Board Secretariat in its *ATIA Review Task Force* report of 2002 advised that "Access to Information Coordinators be encouraged to offer to release information to requesters as soon as it is processed, without waiting for the deadline, or for all of the records to be processed." This right should be set in law, beyond encouragement.)

Recommendation #79

Repeal B.C. *FOIPP Act* Sec. 20, which allows the head of a government institution to refuse to disclose records to a requestor if the head predicts the material will be published by government within 60 days after the request is made.

(Sec. 20 can be misused as a game to buy extra time. An institution may delay a request for records on the basis of this section and, when just before that 60 day period expires, simple change its mind about publication and newly apply exemptions to the record. In 2015 the federal Information Commissioner advised the equivalent section of the *ATI Act* [its Sec. 26] be repealed.)

Recommendation #80

Yet if government does not which to repeal Sec. 20, there is a secondary option: Amend it to change the period from 60 days to 30 days after the request is received, and stipulate that if the record is not published within those 30 days, it must be released forthwith in its entirely with no portions being exempted.

Recommendation #81

Implement these measures advised by Information Commissioner Suzanne Legault (in *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*, 2015):

> 3.5 - The Information Commissioner recommends that, in cases where a consulted party fails to respond to a consultation request, the consulting institution must respond to the request within the time limits in the Act.
>
> 3.6 - The Information Commissioner recommends that a third party is deemed to consent to disclosing its information when it fails to respond within appropriate timelines to a notice that an institution intends to disclose its information.

Recommendation #82

For the B.C. *FOIPP Act,* consider the limits set in Newfoundland's revised FOI law: "23. (1) The head of a public body may, not later than 15 business days after receiving a request, apply to the commissioner to extend the time for responding to the request." The time to make an application and receive a decision from the commissioner does not suspend the period of time referred to here.

("That is a reasonable compromise between the need for some flexibility and the problem of abuse of extensions by public bodies," said the CLD's Toby Mendel on Newfoundland's law, "although I prefer the absolute limits found in many laws, i.e., 30 days plus another 30 and that's it.")

Recommendation #83

Amend the B.C. *FOIPP Act* to change the current 20 day request transfer limit to 5 days (as per the revised Newfoundland FOI law), or a maximum 10 days (as it was in the original B.C. *FOIPP Act)*. The head of the other institution must then reply within the remaining days up to the overall maximum of 30 days.

Recommendation #84

Amend the B.C. *FOIPP Act* to allow for rolling or continuing requests.

(Two provinces admit rolling requests. In Alberta's law: "9(1) The applicant may indicate in a request that the request, if granted, continues to have effect for a specified period of up to 2 years." The same right exists in Ontario's FOI law, Section 24(3).)

***Recommendation #85**

In November 2006 the B.C. information and privacy commissioner created a fine new "expedited inquiry" and "consent order" process to curtail delays, which works effectively today, and some equivalent of this should be prescribed in the B.C. *FOIPP Act*.

Recommendation #86

The B.C. *FOIPP Act* should be amended to require institutions to publicly report each year the percentage of access requests received which were in "deemed refusal" at the time of the response and to provide an explanation of the reasons for any substandard performance.

Recommendation #87

Persistent and excessive failures to respond to B.C. *FOIPP Act* requests within the time limits would be reflected in the reduced remuneration and bonuses of the head of the public body responsible for B.C. *FOIPP Act* compliance (such as deputy ministers).

Proactive Publication and Routine Release

Recommendation #88

The United Kingdom's FOI law, Section 19, imposes a duty on every public authority to adopt and maintain a "publication scheme," which must be kept current and approved by the Information Commissioner, and this rule should be established in British Columbia as well.
In its report on *Bill C-58*, the Senate recommended an amendment to *ATI Act* Sec. 91(1.1): "The [federal] Information Commissioner shall review annually the operation of Part 2, proactive disclosure, and include comments and recommendations in relation to that review in her annual reports." This feature is advisable for the B.C. *FOIPP Act* as well.

Recommendation #89

In the B.C. *FOIPP Act*, Sec. 3(5)(a), "Part 2 does not apply to the following: (a) a record that is available for purchase by the public" - should be amended to read "(a) material available for purchase by the public if such material is available at a reasonable price and in a format that is reasonably accessible, as deemed by the Information Commissioner upon a complaint."

Recommendation #90

Proactive disclosure in the B.C. *FOIPP Act* or another law should mandate the publication of:

- both winning and losing contract bids, so the public can consider for itself the value of the award decisions
- all contracts, licences, permits, authorizations and public-private partnerships granted by the public body or relevant private body

Recommendation #91

The government should include within mandatory publication schemes a requirement that institutions proactively publish information about all grants, loans or contributions given by government, including the status of repayment and compliance with the terms of the agreement.

Recommendation #92

The proactive publication of public opinion polls and research might be mandated, but at the least, the B.C. *FOIPP Act* should be amended to state that that no *FOIPP* exemptions will be applied to results of public opinion research, and that complete listings of polls, and public opinion results, must be provided upon informal request by the public.

Recommendation #93

Amend the B.C. *FOIPP Act* to voice the principle set in the FOI *Code* of Wales (which is subject to the United Kingdom's FOI law) that states: "We will continuously seek opportunities to publish information unless it is exempt under this *Code*. We will publish the facts and factual analyses behind policy proposals and ministerial decisions, unless they are exempt under this *Code*."

(This positive spirit might be contrasted to that of Canada, where some officials file lawsuits to block FOI requests that could reveal facts and analyses related to policy advice.)

Recommendation #94

The B.C. *FOIPP Act* should include a proactive disclosure requirement for environmental enforcement information.

Recommendation #95

Mandate that government statistics and datasets – if all personal identifiers have been removed - cannot be withheld under any B.C. *FOIPP Act* exemption.

Recommendation #96

Amend the B.C. *FOIPP Act* to add a much longer list of records that must be routinely released or proactively published, on the examples of Article 19's *Model Freedom of Information Law* (2001), and those of many other nations and commentators.

See *Appendix B*, below, for some samples of records requiring proactive publication in the FOI laws of other nations.

Penalties

[**Preface**: One of the few good features of Bill 22 is the addition of Part 5.1, Offenses, most notably in Sec. 65.3: "A person who willfully conceals, destroys or alters any record to avoid complying with a request for access to the record commits an offence." Yet still more can be

done, for the Centre for Law and Democracy notes that the *breadth* of subjects for sanctions is more important than the penalties' severity, *per se.*]

Recommendation #97

Implement the advice of the Information and Privacy Commissioner in his letter of Oct. 20, 2021 to the Minister of Citizens Services on the new Part 5.1:

"This is a step in the right direction, but it does not go far enough. The inappropriate destruction of records should be penalized anytime, not only when there is an access to records request in play. This should include oversight over destruction of records other than in accordance with approved disposal schedules, as is the case under Alberta's *FOIPP Act*."

Recommendation #98

Afghanistan's FOI statute (CLD-rated #1 in the world) is quite well rounded, and parts of it may be advisable for the B.C. *FOIPP Act*:

> Article 35. (1) The followings are recognized as violation of this law:
>
> 1 - Providing such information to the applicant that does not conform to the contents of information request form.
>
> 2 - Refusal of information to the applicant without justified reasons.
>
> 5 - Not providing requested information within the allocated timeframe.
>
> 7 - Lack of reporting by the Public Information Officer to the Commission within the specified timeframe.

Recommendation #99

On delays, for an amended B.C. *FOIPP Act*, we should consider the superb FOI law of India, whereby in Article 20(1), if the Information Commission decides that an FOI officer "has not furnished information within the time specified," it shall impose a fine for each day until the information is furnished, up to a maximum amount. (Many other nations' FOI laws have this same feature.)

Recommendation #100

This principle should be adapted in the B.C. *FOIPP Act*: "Article 19 supports criminal penalties for those who obstruct access, but only where such penalties respect the basic criminal rule requiring mental, as well as physical responsibility (*mens reas*). We therefore recommend that this article be amended to provide for liability only where the obstruction was willful or otherwise done with the intention of obstructing access."

Recommendation #102

India's FOI law penalizes those have knowingly given out incorrect, out-of-date, incomplete or misleading information, and this may be advisable for the B.C. *FOIPP Act.*

Recommendation #103

Implement this principle of Transparency International, in *Tips for the Design of Access to Information Laws*, 2006:

"Sanctions should penalize the institutions that have failed to respond to requests for information, along with the heads of these agencies, to avoid the possibility of individual, lower rank civil servants being penalized. The burden of responsibility should rest with those with the power to make change."

Recommendation #104

In Mexico's fine FOI law, officials can be penalized for "fraudulently classifying information that does not fulfill the characteristics indicated by this Law." The FOI law of Ukraine also imposes penalties for "ungrounded categorization of information as restricted access [classified] data."

(Such a principle would be welcome in the B.C. *FOIPP Act*, e.g., if an official deliberately misclassifies cabinet records to exclude them from the *Act*'s scope.)

Recommendation #105

The *B.C. FOIPP ACT* should make it clear that "creative avoidance" practices such as these and others are prohibited:

- Stonewalling, i.e., incorrectly claiming that records do not exist when they do; or not searching properly and then claiming documents cannot be found

- Changing the title of a record sought by an FOI applicant, sometimes after a request for it is received, then wrongly telling the applicant "we have no records responsive to your request." (This has occurred in Canada.) The law should make it make it absolutely clear it is only the record's subject matter that counts, not the record's title *per se*.

- Interpreting the wording of an applicant's request too narrowly, or even altering it, and then replying to the agency's re-worded version

Recommendation #106

In regards to duty to document, draft milder penalties for not creating records, and for not maintaining records properly.

See *Appendix C* below on the wide scope of penalties in Mexico's FOI law.]

Exemptions, harms tests, time limits – general reforms

[**Background**. Several B.C. *FOIPP Act* exemptions lack explicitly-stated harms tests and so are known as "class exemptions," a situation that falls seriously short of world FOI standards. The *B.C. FOIPP Act*'s purpose clause states that one goal is "specifying limited exceptions to the right of access," but when exemptions lack a harms test, this limitations purpose is sometimes defeated. As the human rights organization Article 19 has noted, FOI statutory exemptions should be narrowly drawn, should be based on the content rather than the type or name of the record, and should be time-limited.]

Recommendation #107

Amend the B.C. *FOIPP Act* to state: "The right to refuse information only lasts for the period in which the risk of harm from disclosure remains live, or for the number of years set for each exemption, whichever occurs first."

(This may be ideal phrasing for FOI exemptions, as it ensures the best of both worlds. With the first option, the topic sensitivity might expire long before a set time limit and so the records should be opened. Yet even if they should, if a recalcitrant agency denies this and stubbornly resists in court for years, then the second option of the fixed time limit would remain, as it does now, as a default catch-all net. Also consider the terms of the Czech FOI law: "The right to refuse information only lasts for the period, in which the reason for refusal lasts. In justified cases the subject will verify if a reason for refusal still lasts.")

Recommendation #108

The B.C. *FOIPP Act* should be amended to prescribe that exemptions cannot be generally applied to withhold information that has already been published - subject to a very few special harms exceptions.

(This is advised because there are examples of agencies invoking discretionary FOI exemptions to withhold information published in old newspaper clippings, and data already posted on a company's website. Yet common sense indicates that if harms could have resulted from such information release, these damages most likely would have occurred during its first, "informal" publication, as it was "road-tested"; if they did not, then fears of such harms resulting from a second, formal release via FOI are almost certainly groundless.)

Recommendation #109

Place in the B.C. *FOIPP Act* these terms from Article 19's *Principles of Freedom of Information Legislation*, 1999, endorsed by the United Nations:

> Principle 4. Exceptions should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests. A refusal to disclose information is not justified unless the public authority can show that the information meets a strict three-part test.

(1) the information must relate to a legitimate aim listed in the law;

(2) disclosure must threaten to cause substantial harm to that aim; and

(3) the harm to the aim must be greater than the public interest in having the information

Recommendation #110

Add to above terms this clause from Mexico's FOI law, Article 104, III: "The limitation is consistent with the principle of proportionality and is the least restrictive means available to avoid harm."

Recommendation #111

Add a general provision at the beginning of the exemptions part of the B.C. *FOIPP Act* to oblige heads of institutions to use their discretion in favour of access and openness, not refusal.

Also consider adapting the stronger default right to records present in Finland's FOI law as compared to the B.C. *FOIPP Act*: "1.1 Official documents shall be in the public domain, unless specifically otherwise provided in this *Act* or another *Act*."

Recommendation #112

Implement this worthy proposal from the federal Treasury Board Secretariat's *ATIA Act Review Task Force* report, 2002:

"4-1. The Task Force recommends that guidelines be issued on how to apply discretionary exemptions by: exercising discretion as far as possible to facilitate and promote the disclosure of information; weighing carefully the public interest in disclosure against the interest in withholding information, including consideration of any probable harm from disclosure, and the fact that information generally becomes less sensitive over time; and having good, cogent reasons for withholding information when claiming a discretionary exemption."

Recommendation #113

The B.C. *FOIPP Act* should make clear that officials may not mingle exempt and non-exempt records together, then claim an exemption for them all (for example, wrongly placing records into files of cabinet documents).

Recommendation #114

Establish an expert independent panel of academics, historians, journalists, librarians, and representatives of the B.C. Archives, the OIPC, etc., to advise and report upon [1] the de-classification of historical records, and [2] the ideal time limits for each B.C. *FOIPP Act* exemption. These could be two separate panels.

(Several nations' FOI laws simply allow for all material prior to a certain historical point to be released, and this could be considered for the B.C. *FOIPP Act*. Some nations also release certain older records proactively at a set time without FOI requests; for instance, Britain sends cabinet records to the National Archives for public viewing under "the 30 year rule," an ongoing tradition that predated the passage of its FOI law.)

Recommendation #115

Consider the proposal in *A Call for Openness*, the report of the MPs' Committee on Access to Information (2001) for the B.C. *FOIPP Act* - **"**We recommend that the *Access to Information Act* be amended to include a 'passage of time' provision requiring institutions to routinely release records under their control 30 years after their creation. This provision would override all exemptions from release contained in the *Act.*"

Other Topics

Recommendation #116

The whistleblower protection Sec. 30.3 of the B.C. *FOIPP Act,* and the B.C.'s *Public Interest Disclosure Act (PIDA)* of 2018, contain many helpful features.

Yet add this statement within the B.C. *FOIPP Act*: "Protection from civil and criminal liability: Any person who grants or discloses information in good-faith reliance on provisions of the B.C. *FOIPP Act* shall be protected from any and all civil and criminal liabilities, even if it is later determined that the information was in fact exempted. Similar protection shall be accorded all persons that receive information pursuant to this *Act.*" Consider expanding the protection to "anything done in good faith in the performance of the *Act*."

Privately survey all B.C. FOIPP staffers to inquire what they believe would be the best whistleblower protection measures, then implement what the majority advise.

(See B.C. FIPA report *Best Practices in Whistleblower Legislation,* by Carroll Anne Boydell*, 2018, at* https://fipa.bc.ca/best-practices-in-whistleblower-legislation-an-analysis-of-federal-and-provincial-legislation-relevant-to-disclosures-of-wrongdoing-in-british-columbia/)

Recommendation #117

Amend Sec. 22 to state that bonuses of named officials and employees of all entities covered by the B.C. *FOIPP Act* are not the private information of individuals, and encourage the government to post them online, as it does for salaries and expenses.

Amend the *Act* to state that all salaries and expenses of officials and employees of all entities covered by the B.C. *FOIPP Act* must be available for routine release, without an FOI request,

and encourage all such entities to publish such figures online annually, as the B.C. government does for ministries for salaries over a certain limit.

Recommendation #118

State in the B.C. *FOIPP Act* that government and agencies may not invoke the rationale of "out of scope" - or any equivalent term - to withhold any part of any record requested under the B.C. *FOIPP Act*. Records or parts of records may only be withheld if they fall under an exemption in the *Act*, not if officials assert they fall outside the request's scope, or the *Act*'s scope.

(This latter practice has occurred, prior to an OIPC order of Dec. 2011 which forbade it. See https://thetyee.ca/Blogs/TheHook/2011/12/08/Govt_Cant_Hide_Ministers_Records/ The OIPC also ruled on June 19, 2015 that topic headings do not qualify for Sec. 12.)

Recommendation #119

Delete B.C. *FOIPP Act* Sec. 22.1. Disclosure of information relation to abortion services (a section unique in the FOI world). Such informational harms are already prevented by other exemptions.

***Recommendation #120**

The Federal Court stated that Ottawa can no longer charge fees for the search and processing of electronic government documents covered under the *ATI Act*, per the 2015 ruling of Justice Sean Harrington. This principle should be set in law in the B.C. *FOIPP Act.*

Recommendation #121

Extend the free time "spent locating and retrieving a record" in B.C. *FOIPP Act* Sec. 75(1)(b)(i) from the current 3 hours up to 5 hours (which is the standard in the federal *ATI Act*).

Recommendation #122

Amend the *Act* to establish that an applicant who makes a formal access request has the right to anonymity throughout the entire process, as in the Newfoundland FOI law. Add a privacy protection clause in the B.C. *FOIPP Act* to state that an applicant's identity must not be revealed within government without a strict need to know (for example, to locate the records the applicant seeks that include his or her name, or with one's consent).

Recommendation #123

Implement in the B.C. *FOIPP Act* the advice of federal Information Commissioner John Reid's 2002 report, that the *ATI Act* should be amended to give a requester the right to request information in a particular format; that departments should be allowed to deny the request on reasonable grounds, but any refusal should be subject to review by the Information Commissioner.

His proposal to create *ATI Act* regulations on these matters is also advisable for the B.C. *FOIPP Act*:

"Act and regulations do not, however, mention the conversion of data from one format into another. If requesters are asked to pay for these conversions (which can often be done simply and automatically), will subsequent requesters have to pay again? Or will a department, having accomplished the conversion once, be required to maintain the data in the converted format for future requests? Would documents printed on demand from an electronic record be held in anticipation of a future request? No regulations are in place to govern on-line or remote access to electronic information."

Recommendation #124

Amend the B.C. *FOIPP Act* to permit a government institution to group all requests received from a requester (within 30 days of receipt of the initial request) on the same subject matter. When grouping has been employed, it is appropriate that the requester be so informed in the extension notice.

Recommendation #125

For B.C.'s directors/managers of information and privacy (DMIPs), implement the advice of the 1987 MPs' Justice Committee *Open and Shut* report - which stated that the time was long past due to professionalize their role - to [1] classify them as part of departmental senior management group, [2] make them a part of departmental executive committees, [3] give them direct reporting relationships with deputy heads of departments, [4] develop a uniform set of job descriptions and set of expectations for them, [5] ensure that they have completed standard, formal training in their discipline and [6] surround them with a leadership culture which does not penalize them for making the access law effective within their institutions.

Recommendation #126

Add a clause to the B.C. *FOIPP Act* to state that B.C. officials may never assert "crown copyright" regarding records released in response to B.C. *FOIPP Act* requests. Follow the lead of the American *Copyright Act,* which states that no government records can be copyrighted.

(For years, B.C. ministries would attach notices inside packages of documents mailed to FOI applicants, warning that: "These records are protected by copyright under the federal *Copyright Act*, pursuant to which unauthorized reproduction of works is forbidden." In 2008, Stanley Tromp complained to B.C.'s Privacy Commissioner, who reviewed the issue. In a letter to Tromp of June 1, 2009, he stated: "Government has decided to cease including copyright notices in access to information disclosures." While this voluntary move is welcome, there is no guarantee the problem could not arise again someday, hence it needs to be prohibited by law.)

Recommendation #127

Implement a policy directive for the department that administers the B.C. *FOIPP Act* system to educate and promote the access process to the general public. This might also be done by the B.C. information and privacy commissioner's office, which has a right to "inform the public about this Act" in Sec. 41(1)(c) of the *Act;* if so, government must provide adequate funds for this work, and it would be a dedicated, stand-alone part of the Commissioner's budget.

Recommendation #128

The legal system for B.C. *FOIPP Act* cases needs to be made more fair and equitable for all. The *Act* should include a bar on costs being awarded against a requestor if a third party appeals a decision to B.C. court and the requestor wishes to appear as a party in the court proceeding.

We should also seek wider grounds to bar court costs in B.C. *FOIPP Act* cases from being levied against a citizen applicant or lay litigant, considering the large imbalance of power and resources. If such costs are assessed against an applicant, he or she could be financially ruined, which is why some applicants dare not engage in FOI litigation. It is especially unwarranted if important legal or Constitutional FOI issues are in dispute.

Recommendation #129

The relevant statute should state that the usage of in-camera affidavits in B.C. *FOIPP Act* court cases should be curtailed to the bare minimum necessary and justifiable.

(Inequity arises when FOI applicants, who are sometimes lay litigants, voice all their arguments in the open, where these can be parsed and shredded by expert Crown lawyers, at unlimited public expense; by contrast, the agency too frequently presents its arguments and much evidence with in-camera affidavits, which the applicant cannot view or challenge, and hence must prepare reply submissions to these in the dark.)

Recommendation #130

One feature of American FOI litigation worth contemplating for our B.C. *FOIPP Act* is the "Vaughn Index." This is a document prepared by agencies that are opposing disclosure under the U.S. *FOIA*. It must describe each document or portion that has been withheld and provide a detailed justification of the agency's grounds for non-disclosure. This is intended to help "create balance between the parties," said one U.S. court.

Recommendation #131

Add a clause to the B.C. *FOIPP Act* to state that access to government information is to be regarded in the province as "a human right."

(There is a growing body of authoritative statements by international human rights bodies and courts to the effect that FOI is a fundamental human right. Such right of access is entrenched in human rights law through decisions of the Inter-American Court of Human Rights and the

European Court of Human Rights, as well as the UN Human Rights Committee's 2011 *General Comment on Article 19 of the International Covenant on Civil and Political Rights*, to which Canada is a party.)

Recommendation #132

Consider an amended broader purpose clause for the B.C. *FOIPP Act*.

(The stated principles in the purpose clause are extremely important, for these can provide guidance to commissioners or judges in writing their rulings. Other factors could be added to the B.C. *FOIPP Act's* existing Sec. 2; in other nations, these include: accessing information necessary to investigate crimes against humanity, human rights violations, crimes of economic damage to the state, environmental harms, and reducing corruption and inefficiency. The purpose clauses in the FOI laws of Alberta and Nova Scotia have good features.)

Recommendation #133

That the B.C. Premier ask the Prime Minister and other premiers to begin discussions on amending the Canadian Constitution to include the public's right to obtain government information - which is a provision that 42 other nations have in their Constitutions or Bill of Rights, and one that was urged by B.C.'s first information and privacy commissioner David Flaherty.

Recommendation #134

Immediately work in full partnership with First Nations and their representative organizations to develop and enact mutually agreed-upon changes to policy and legislation regarding access to information, in full compliance with Article 19 of the UN Declaration of the Rights of Indigenous Peoples.

(Complete and timely access to federally controlled information is essential to First Nations' pursuit and resolution of their historical grievances against the Crown, including historical breaches of the Crown's legal obligations under statutes or treaties. Full access to information is also necessary for Indigenous peoples to protect and advance their Title, Rights, and Treaty Rights, and in matters related to governance and cultural interests.)

Recommendation #135

Create a "British Columbia Freedom of Information Forum." This would candidly and respectfully discuss systemic FOI practices and problems, and pragmatically attempt to resolve these.

This would be a council of B.C. *FOIPP Act* applicants (such as journalists, lawyers, FOI advocates, academics) and senior government officials (such as DMIPs, deputy ministers, chief information officers, and members of the OIPC), which would meet semi-formally once a year to begin and then perhaps more often, by teleconferencing if need be. Its low key work would differ

from a (sometimes politicized) Legislative law review each six years, and focus far more on FOI practice than law reform *per se*.

This Forum could be organized by a university department (e.g. sociology, political science), law school, journalism school, or association of FOI professionals, and it might be chaired by a neutral third party such as a professor, retired judge or ombudsperson. The United States has such an entity: the *FOIA Advisory Committee*, chaired by OGIS - https://www.archives.gov/ogis/foia-advisory-committee Its records would be public via FOI, of course, because it performs "a public function."

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Appendix A – The Dutch FOI protection for policy analysts

For the B.C. *FOIPP Act* Sec. 13, consider the Dutch legal protection for policy analysts. In the Canadian public service, civil servants "who even cast the slightest doubt on the wisdom of the government's policy are severely reprimanded," wrote one author. The Netherland's FOI law takes account of this concern, with a unique provision:

> 11. 1. Where an application concerns information contained in documents drawn up for the purpose of internal consultation, no information shall be disclosed concerning personal opinions on policy contained therein.
>
> 11. 2. Information on personal opinions on policy may be disclosed, in the interests of effective, democratic governance, in a form which cannot be traced back to any individual. If those who expressed the opinions in question or who supported them agree, information may be disclosed in a form which may be traced back to individuals.
>
> 11. 3. Information concerning the personal opinions on policy contained in the recommendations of a civil service or mixed advisory committee may be disclosed if the administrative authority directly concerned informed the committee members of its intention to do so before they commenced their activities.

The initial Dutch exception is phrased in extremely broad terms, and is also mandatory. But its clawbacks (or exceptions to the exception) are indeed interesting as an option, hence worth considering, perhaps with a caveat about the breadth of the initial exception in this area. In the Netherlands under these terms, much useful policy information could still be released, which is better than no release at all. If included in the B.C. *FOIPP Act*, this could relieve some fears of provincial government analysts distressed at being identified, with the feared effect on their careers.

Appendix B – Several proactive publication rules of other nations

Pro-active publication and routine release are amongst the FOI issues on which the world has left Canada farthest behind.

Most other nations from Albania to Zimbabwe prescribe such information release in sections of their FOI statutes, and many of these are exhaustive, sometimes running to over 400 words each; the longest is that of Kyrgyzstan with 1,800 words. As well, proactive publication can also be mandated in statutes other than the FOI law. Below are just a few.

• All statutes and internal regulations must be published (Columbia and other nations)

• Courts and other bodies are required to publish the full texts of decisions, and the Congress is required to publish weekly on its web site all texts of "projects of laws" (Ecuador)

• Public bodies must publish information on a government activity's influence on the environment (Armenia)

• In Serbia, the National Council is required to publish the data of sessions, minutes, copies of acts and information on the attendance and voting records of MPs.

• The state must publish contracts including a list of those who have failed to fulfill previous contracts, budgets, results of audits, procurements, credits, and travel allowances of officials (Ecuador); and information relating to public tenders (Croatia)

• In Estonia, national and local governments must post online: statistics on crime and economics; information relating to health or safety; budgets and draft budgets; information on the state of the environment; and draft acts, regulations and plans including explanatory memorandum. They are also required to ensure that the information is not "outdated, inaccurate or misleading" (The Estonian FOI law cites 32 types of public records to be published in Section 28)

• In Brazil, government must publish on the internet a list of the information which has been declassified in the last 12 months, and a list of information classified in each level of secrecy

• In Palestine's draft FOI bill, Art. 8 requires public and private "industrial institutions" to publish six-monthly reports providing information on the location, nature and associated hazards of toxic materials used by them, the volume of materials released into the environment as a result of manufacturing processes and waste disposal methods and mechanisms they use.

Appendix C - FOI Penalties: the wide scope of Mexico's law

[The freedom of information law of Mexico - RTI-ranked #2 in the world by the CLD-AIE - is an outstanding model to follow, in many ways. Although it is not clear from below what the exact penalties would be, the scope of the subjects is the widest I have seen in an FOI statute so far]

Article 206. The Federal Act and those of the States will set forth as penalty causes for breach of its obligations under the terms of this Act, at least the following:

I. The lack of response to requests for information within the time specified in the applicable regulations;

II. Acting with negligence, willful misconduct or bad faith in the substantiation of requests regarding access to information or by not disseminating information concerning the transparency obligations under this Act;

III. Not meeting the deadlines under this Act;

IV. Using, removing, disclosing, hiding, altering, mutilating, destroying or rendering useless, totally or partially, without legitimate cause, according to a relevant authority, the information in the custody of the regulated entities and their Public Servants or to which they have access or knowledge by reason of their employment, office or commission;

V. Delivering incomprehensible, incomplete information, in an inaccessible format or a mode of shipment or delivery different from the one requested by the user in his request for access to information, responding without proper grounds as established by this Act;

VI. Not updating the information corresponding to the transparency obligations within the terms set forth in this Act;

VII. Intentionally or negligently declaring the lack of information when the regulated entity should generate it, derived from the exercise of its powers, duties or functions;

VIII. Declaring the lack of information when it wholly or partly exists in its archives;

IX. Not documenting with intent or negligence, the exercise of its powers, duties, functions or acts of authority in accordance with applicable regulations;

X. Performing acts to intimidate those seeking information or inhibit the exercise of the right;

XI. Intentionally denying information not classified as secret or confidential;

XII. Classifying as confidential, intentionally or negligently, the information without it meeting the characteristics indicated in this Act. The penalty shall apply when there is a prior ruling by the Guarantor Agency, which is final;

XIII. Not declassifying information as secret when the reasons that gave rise thereto no longer exist or have expired, when the Guarantor Agency determines that there is a cause of public concern that persists or no extension is requested by the Transparency Committee; XIV. Not meeting the requirements laid down in this Act, issued by the Guarantor Agencies, or

XV. Not complying with the resolutions issued by the Guarantor Agencies in the exercise of their functions. The Federal Act and those of the States shall establish the criteria to qualify the penalties, according to the seriousness of the offense and, where appropriate, the economic conditions of the offender and recidivism. Likewise, they shall include the type of penalties,

procedures and terms for implementation. The penalties of an economic character may not be paid with public funds.

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CANADIAN SOURCES

• ***Open and Shut: Enhancing the Right to Know and the Right to Privacy***. Report of the MPs' Standing Committee on Justice and Solicitor General on the Review of the *Access to Information Act* and the *Privacy Act*. Ottawa, 1987.

• *The Access to Information Act: A Critical Review. Ottawa*. A report prepared for the Information Commissioner of Canada by the consultants Sysnovators Ltd. of Ottawa, 1994. https://www.humanrightsinitiative.org/programs/ai/rti/implementation/monitor/critical_review_1994_canadian_info_comm.pdf

• *Toward a Better Law: Ten Years and Counting*. By John Grace, Information Commissioner. Recommendations for *B.C. FOIPP ACT* reform, in Commissioner's 1993-94 Annual Report

• *Blueprint for Reform*. By John Reid, Information Commissioner. Recommendations for *B.C. FOIPP ACT* reform, Commissioner's 2000-01 Annual Report. Ottawa, 2001. https://publications.gc.ca/collections/Collection/IP20-1-2001E.pdf

• *A Call for Openness*. Report of MPs' Committee on Access to Information, chaired by Liberal MP John Bryden. Ottawa, 2001

• *Access to Information: Making it Work for Canadians.* Report of the Access to Information Review Task Force. Ottawa, 2002. Appended with 29 research reports. https://publications.gc.ca/collections/Collection/BT22-83-2002E.pdf

• *Response to the Report of the Access to Information Review Task Force*, by John Reid, Information Commissioner, 2002. (This is by far the most detailed and comprehensive pro-transparency list of *B.C. FOIPP ACT* reforms, hence indispensable reading - especially on Sec. 69, cabinet records.) https://www.oic-ci.gc.ca/en/resources/reports-publications/response-report-access-information-review-task-force-special-report

• *Bill C-201 An Act to amend the Access to Information Act and to make amendments to other Acts*. Introduced by NDP MP Pat Martin, 2004

• *A Comprehensive Framework for Access to Information Reform: A Discussion Paper.* Justice Department of Canada, Ottawa, 2005. https://www.justice.gc.ca/eng/rp-pr/csj-sjc/atip-aiprp/ati-aai/ati-aai.pdf

• *Access to Information Act - Proposed Changes and Notes*. Draft bill by John Reid, Information Commissioner, Ottawa, 2005

• *Stand Up For Canada*. Federal election platform statement of the Conservative Party of Canada, 2006

• *Restoring Accountability*. From the Final Report of the Commission of Inquiry into the Sponsorship Program and Advertising Activities, by Justice John H. Gomery. Ottawa, 2006. https://publications.gc.ca/site/eng/287381/publication.html?wbdisable=true

• *Strengthening the Access to Information Act. A Discussion of Ideas Intrinsic to the Reform of the Access to Information Act*. Government of Canada discussion paper, Ottawa, 2006. https://www.justice.gc.ca/eng/rp-pr/csj-sjc/atip-aiprp/B.C. FOIPP Act -lai/B.C. FOIPP Act -lai.pdf

• *Bill C-556, Act to amend the Access to Information Act*. Introduced by Bloc Quebecois MP Carole Lavallée, 2008

• *Strengthening the Access to Information Act to Meet Today's Imperatives.* By Robert Marleau, Information Commissioner, 2009. https://www.oic-ci.gc.ca/en/resources/reports-publications/strengthening-access-information-act-meet-todays-imperatives

• *The Access to Information Act: First Steps Toward Renewal.* Report of the Standing Committee on Access to Information, Ethics and Privacy. Chaired by Liberal MP Paul Szabo, 2009 https://www.ourcommons.ca/DocumentViewer/en/40-2/ETHI/report-11

• *Failing to Measure Up: An Analysis of Access to Information Legislation in Canadian Jurisdictions*. The Centre for Law and Democracy (Halifax), 2012. https://sitka.bibliocommons.com/v2/record/S49C126602784

• *The Access to Information Act and Proposals for Reform.* A summary for the Library of Parliament by Kristen Douglas, 2005, rev. 2012. https://publications.gc.ca/site/fra/426825/publication.html

• *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*. By Suzanne Legault, Information Commissioner, 2015. https://www.oic-ci.gc.ca/sites/default/files/userfiles/files/eng/reports-publications/Special-reports/Modernization2015/OIC_14-418_Modernization%20Report.pdf

• *Failing to Strike the Right Balance for Transparency: Recommendations to improve Bill C-58*. By Suzanne Legault, Information Commissioner, 2017. https://www.oic-ci.gc.ca/en/resources/reports-publications/failing-strike-right-balance-transparency

• Senate of Canada, *Observations to the thirtieth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-58*), 2019. https://sencanada.ca/en/committees/report/69354/42-1

• *Fallen Behind: Canada's Access to Information Act in the World Context,* by Stanley Tromp. 2nd revised edition. BC Freedom of Information and Privacy Association (FIPA), Vancouver, 2020. https://fipa.bc.ca/wp-content/uploads/2020/05/2020_FallenBehind.pdf

• *A Declassification strategy for national security and intelligence records.* A report for the Information Commissioner by Wesley Wark, 2020. https://www.oic-ci.gc.ca/en/resources/reports-publications/declassification-strategy-national-security-and-intelligence-records

• *Information Commissioner on the Government of Canada's Review of the Access to Information Regime*, by Carolyn Maynard, Information Commissioner, 2021. https://www.oic-ci.gc.ca/en/resources/reports-publications/observations-and-recommendations-information-commissioner-review

A Note on the Author

Stanley L. Tromp is a graduate of the University of British Columbia Political Science department (B.A., 1997), where he completed the course in international law at the UBC Law Faculty, and won the 1996 essay prize on the Responsible Use of Freedom from St. Mark's College at UBC. He graduated from the Langara College journalism program (Vancouver, 1993), and was awarded the best Langara journalism student prize from the B.C. Yukon Community Newspaper Association (BCYNA). He served in the Canadian Forces reserves (39th Brigade) from 2002 to 2008.

He has been nominated for a Webster Award (2015), a Canadian Association of Journalists award (1997), a B.C. Newspaper Foundation award (1999), and won a Canadian Community Newspaper Association prize in 2013.

While a reporter for the UBC student newspaper the *Ubyssey,* his freedom of information act request for the UBC-Coca Cola marketing contract in 1995 prompted a five-year legal dispute, a successful B.C. Supreme Court appeal, and an influential ruling for disclosure by the B.C. Information and Privacy Commissioner. His appeals have also been the subject of 22 other rulings by the B.C. Commissioner.

For news articles, he has made hundreds of FOI requests, including to foreign countries and American states, and has been called "one of the more diligent and creative practitioners of access-to-information reporting" by a B.C. legislative columnist. His news stories have been published in the *Globe and Mail*, the *Vancouver Sun*, the *Georgia Straight*, *Vancouver Magazine*, the *Vancouver Courier*, *The Province* (Vancouver), the *Financial Post*, *The Canadian Press, The Courthouse News*, and many other publications; plus editorials on FOI topics.

He has also produced many non-FOI stories – notably one in 2008 from research in the British Archives. This revealed that in 1948, the British governor of Newfoundland in secret memos had urged the British naval chief to send a warship with 200 armed sailors to stand by near St. John's out of sight, to quell any potential riots by people opposed to the Confederation vote result. (Link)

He has spoken often to House of Commons and Senate committees in Ottawa considering *ATI Act* amendments, and has made four presentations to British Columbia legislative reviews of the provincial *FOIPP Act*, plus the Alberta FOIPP review. He was one of the founders of the group B.C. Journalists for Freedom of Information (BCJC) in 1998.

In 2007-08, as an aid to FOI scholars and advocates, he spent a year compiling the first *World FOI Chart*, an Excel spreadsheet comparing all the world's FOI laws, with NGO commentaries, posted at his website. The Chart was the foundation of his book *Fallen Behind: Canada's Access to Information Act in the World Context*, a book one lawyer called "by far the most comprehensive comparative analysis to date of Canadian and international access to information laws." It was fully revised and updated in 2020.

He spent the two years of the COVID-19 shutdown in research, to compile a database of all 6,500 news articles produced through the federal *Access to Information Act* since its passage in 1983, plus 2,000 news stories resulting from the British Columbia FOI law, and writing 100 word summaries of each. The result was published by its sponsor BC FIPA in August 2021. This *ATIA News Story Index* and *B.C. FOI News Index* were created to demonstrate the value of FOI laws to public, and thus help built support for needed law reforms, plus providing a morale boost and story ideas for reporters and journalism students.

That month also saw the posting of his *Time for Change: A List of 206 Recommendations for Access to Information Act Reform*, the most comprehensive catalogue of needed amendments to the *ATI Act,* produced for the Centre for Free Expression at Ryerson University. His FOI website – www.canadafoi.ca – has been consulted by the general public, journalists, university professors, courthouse and parliamentary librarians, politicians, senior bureaucrats and Crown lawyers from many nations.