Appendix 7 of Stanley Tromp's submission to B.C. legislative 2022 review of *FOIPP Act*

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.

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.

But 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." (It then failed to do so.)

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, [1] 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)?"

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 new task.)

[1] 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*.

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.[2]

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 [yet the unions are not taxpayer subsidized as SSs are – BTW, the LSU is not an actual "union"]; 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.[3] 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, 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.

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[2] 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.

[3] 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*.

(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
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> (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. Why? 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. [Why not? – S.T.]

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.]