

Vaughn Palmer: One journalist's failed (so far) efforts to reform B.C.'s FOI law

Stanley Tromp's recommendations have been ignored by successive review committees

BY VAUGHN PALMER, VANCOUVER SUN COLUMNIST NOVEMBER 16, 2015



'The current premier based her leadership campaign on open government and transparency. Now is her chance to demonstrate it,' said investigative Journalist Stanley Tromp.

Photograph by: Handout, Vancouver Sun

VICTORIA

While the B.C. Liberals are required by law to periodically appoint a legislative committee to review the province's Freedom of Information law, those reviews tend to bear no fruit because government is not bound to implement the recommendations.

The lack of an enforcement mechanism lends an air of hopelessness to the proceedings, as was readily apparent when investigative journalist Stanley Tromp addressed the last review in early 2010.

"I spoke to B.C. legislative committees reviewing the FOI law twice before, in 1998 and 2003, yet no

major positive amendments resulted from those reports,” declared Tromp at the outset of his presentation to the government and Opposition MLAs on the committee.

“Although I believe you mean very well, can you provide any cause for hope that the political results will be different this time?” Tromp challenged. “I wonder if I might have to return in five years again to plead all the same points.”

The date was Feb. 2, 2010. Just three months short of the six-year anniversary of that presentation, Tromp was back in front of the latest iteration of the committee, with a progress report that was as dismal as it was predictable.

He began by re-tabling all 67 recommendations for improvements in the legislation that he had presented to the previous version of the committee back in 2010.

“None were implemented since then — not one,” Tromp advised. “As well, the best recommendations of the first three FOI review committees were shelved by premiers and cabinets and never acted upon.”

Enough to turn an access-to-information maven into an embittered cynic. Still after a long engagement with FOI — “my life’s main work for the past 20 years” — Tromp prefers to style himself as a “political idealist,” albeit with a dose of realism.

“With Canada’s ineffective FOI laws, we can produce far fewer FOI news stories than the American press does. In fact, I often use the FOI laws of Washington state. The contrast in service with B.C. is like night and day.”

All by way of underscoring the shame of a province that two decades ago, under the New Democratic Party government of then-premier Mike Harcourt, produced what was regarded as model legislation for access to information.

The years since have seen a steady erosion of access coupled with the don’t-write-it-down and delete-it-if-you-do practices that are the hallmarks of oral government. Those evasions began under the New Democrats but have been expanded in ever more creative fashion under the B.C. Liberals.

Among current abuses, Tromp highlighted for the committee what he regards as the three most pressing needs for legislative fixes.

One was a written into law as a check on oral government, namely the much-recommended by Information Commissioner Elizabeth Denham “duty to document” key government decisions.

He would also tighten the legislative exemption allowing government to withhold any and all “advice or recommendations developed by or for a public body or minister,” including the facts and analysis assembled in the course of crafting such advice and recommendations.

“The most widely misused section of the act,” Tromp called it, particularly after a court decision that licensed the broad interpretation favoured by cover-their-butts bureaucrats.

“Officials use the policy advice exemption in practice as a de facto, all-purpose master key that can lock up almost any FOI door, or a catch-all net hanging beneath all the other exemptions “

His third recommendation was for information access to be extended to corporate spinoffs of government agencies, crown corporations and publicly funded universities, ending the much abused regime of secrecy around such entities.

Drawing on the considerable research compiled on his Canadian FOI resource website, Tromp noted that such extensions were already a legislative feature in jurisdictions as diverse as the United Kingdom, South Africa, India and — ahem — the Islamic Republic of Iran.

"I'm well aware that Iran has dreadful human rights problems and I would not wish us to endorse it as a model for anything else," added Tromp. "My point is just to show that overall standards have risen to such a level that even that republic endorses the principle, along with advanced democracies."

Being under no illusions that his recommendations might be destined for the same ash heap as earlier versions, Tromp nevertheless noted how the current review was conducted against a backdrop of heightened public awareness of FOI abuses.

He's right about that. A little over a month ago, the committee was drawing so little interest that its Liberal MLA chair, Don McRae, put out a public appeal for submissions. Then came the Oct. 22 report from information watchdog Denham, with its top-to-bottom lambasting of the Christy Clark government for failing to respect its duties under the act.

Suddenly the committee was launched to the forefront of government damage control, with Premier Clark and Liberals seeking its recommendations on the duty to document and other reforms.

But "there's no need to reinvent the wheel," as Tromp noted in his presentation. "The current premier based her leadership campaign on open government and transparency. Now is her chance to demonstrate it."

The committee record already includes ample advice and recommendations on the necessary reforms. All that is really needed to complete the process is a demonstration of political will.

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