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BLOG

A LEGAL DUTY TO DOCUMENT?

On March 8, 2017, the Minister of Finance, the Honourable Mr. Michael de Jong, tabled Bill 6, the *Information Management (Documenting Government Decisions) Amendment Act, 2017*. The intent of the Bill is to enact the recommendation of the former Information and Privacy Commissioner, Elizabeth Denham, to legislate a duty to document key governmental decisions.

If enacted, the Bill will amend the *Information Management Act* to provide the Chief Records Officer with the ability to issue directives and guidelines to government bodies subject to the Act to:

- create records that adequately record decisions connected to the government body's business; and
- determine what constitutes an adequate record of those decisions.

The Bill will also make the designated heads of government bodies responsible to ensure their government body has an adequate system in place to create and maintain adequate records of its decisions and to make sure "reasonable steps" are taken to ensure the government body is complying with any directives or guidelines issued by the Chief Records Officer.

Bill 6 will only affect government bodies that are subject to the *Information Management Act*. Local government bodies such regional districts and municipalities are not expected to be affected by this new legislation. Nevertheless, any directives or guidelines made by the Chief Records Officer may be informative to local governments in terms of record retention policies.

The Bill has been criticized by some as being too permissive. This is because the Bill merely authorizes the Chief Records Officer to issue directives and guidelines, without actually requiring the Chief Records Officer to issue any directives or guidelines at all. Arguably, the Bill places a legal responsibility on the heads of government bodies subject to the Act to ensure their government body has a system in place to adequately record key decisions. However, until the Chief Records Manager issues directives or guidelines, it appears that it is at the discretion of the heads of governmental bodies to determine what constitutes an "adequate" system.

It appears that the intention of this Bill is to leave oversight of the duty to document to the Legislature, and not the Office of the Information and Privacy Commissioner since the Bill places

the duty to document in the *Information Management Act*. The provisions of the *Information Management Act* are not subject to direct oversight of the OIPC.

A copy of the current draft of the Bill can be found [here](#).

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