

# Opinion: B.C. government's 'duty to document' bill an empty facade

Bill 6, purportedly a duty to document, only gives the chief records officer the discretion to bring in “directives and guidelines” on the creation of adequate records.

STANLEY TROMP ([HTTPS://VANCOUVERSUN.COM/AUTHOR/STANLEY-TROMP](https://vancouver.sun.com/author/stanley-tromp)) Updated: March 14, 2017



'This creates no duty on anybody,' Vincent Gogolek, executive director of B.C.'s Freedom of Information and Privacy Association, says of the province's Bill 6 on legislating a duty to document. 'It's not even half measures. A legal duty uses the words 'must' or 'shall', not the word 'may.' ' *GERRY KAHRMANN / PNG FILES*

The B.C. Freedom of Information and Protection of Privacy Act was passed in 1992 to ensure the public

had access to governmental records on matters such as health and safety, the use of taxpayers' money and governmental wrongdoing.

But this right of access is simply meaningless if records were never generated in the first place.

This problem was highlighted by the triple-deletion scandal, whereby potentially sensitive documents sought by an FOI requestor about missing women on the Highway of Tears were erased. It emerged that for years, millions of e-mails have been wiped from the public record, with officials believing this was nothing wrong, nor their habit of oral decision making to avert FOI revelations.

A probe by former B.C. information commissioner David Loukidelis revealed the sorry truth and advised the creation of a legal duty to create records of key decisions. So did the all-party legislative review of the FOI law in 2016.

Political pressure was mounting to such a height that the government had to fix the problem (or appear to), two months before an election. And so on March 8, Finance Minister Mike de Jong proudly introduced Bill 6, which he hopes to pass into law before the legislature closes this Thursday. He stated this bill amends the Information Management Act so that "British Columbia will become the first Canadian province to legislate a duty to document."

This is simply incorrect.

Bill 6 only gives the chief records officer — a government appointee who reports to the finance minister — the discretion to bring in "directives and guidelines" on the creation of adequate records. The information commissioner — an independent officer of the legislature — will not be able to review any of these decisions. This runs contrary to the Special Committee's advice, which wanted a mandatory duty placed in the FOI law instead, and Bill 6's small measures do not even apply to all public bodies.

It is difficult to imagine many people so naive as to swallow this risible claim, and the reaction was swift. The North Shore News called de Jong's bill a paper tiger ("paper kitten" would be more apt).

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Opinion writer Stanley Tromp.

even half measures. A legal duty uses the words 'must' or 'shall', not the word 'may.' "

This problem has been widely known in B.C. for over 15 years. Deputy Premier Ken Dobell startled listeners at an FOI conference in 2003 by saying "I don't put stuff on paper that I would have 15 years ago," frankly conceding his reason was FOI avoidance.

"The fallout is that a lot of history is not being written down," he added.

"Archivists of tomorrow will look for

those kinds of things, and none of it will be there. It will change our view of history."

Indeed.

The most flagrant example came from the 2010 Olympic Games Secretariat, a government entity that managed \$2.5 billion of public money. I had twice obtained hundreds of pages of its meeting minutes through FOI. Then, after growing annoyed by this process, the Secretariat found a tidy solution: it stopped recording minutes.

Its spokesman stated: "The Secretariat was keeping minutes but found they were not an effective management tool." He blithely added that its approach to keeping records is "consistent with cross-government practices and legislation." (But what is the consequence? A whole provincial government of non-minute-taking departments?) De Jong's bill will not ensure this woeful event will never happen again.

"As to the 'don't-write-it-down school,' any effort to run government without creating records would be humorous if it were not so dangerously juvenile," wrote former federal information commissioner John Grace. "The misguided effort to avoid scrutiny by not making records is driven by ignorance of the law's broad exemptive provisions."



B.C. Finance Minister Mike de Jong (right) and Premier Christy Clark are behind Bill 6, which de Jong maintains will have B.C. becoming the first Canadian province to legislate a duty to document. *CHAD HIPOLITO / CANADIAN PRESS FILES*

To be fair, the federal government and the other provinces have also failed to implement record creation. Yet several nations' FOI statutes — including those of New Zealand, Denmark and Poland — codify record creation.

Way back in 1950 the United States enacted the Federal Records Act. It states the head of each agency “shall” cause to be made records on the agencies’ “decisions, procedures, and essential transactions” so as to protect both the government and “persons directly affected by the agency’s activities.”

In 1999 B.C. passed the Local Government Act, becoming the first province to prescribe that civic councils must generate records of resolutions and decisions. Why should we accept any less of senior government?

We can do better. Beyond a loss of public accountability, a lack of written records leads to poor governance, and when that happens, we are all in trouble. “Left without written precedents and decisions, officials are deprived of the benefit of their predecessor’s wisdom — or folly,” wrote Grace.

As much as their dread of publicity, it is also likely that officials chafe at the extra labour of creating records. Yet Premier Christy Clark would do well to heed Confucius: "The strongest memory is not so reliable as the weakest ink."

*Stanley Tromp is an independent news reporter. His report on B.C.'s FOI law, [The Vanishing Record](http://www3.telus.net/index100/thevanishingrecord) (<http://www3.telus.net/index100/thevanishingrecord>), is at his website.*

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