

ATIPPA, 2015 - Jurisdictional Scan completed by August 2016

The following jurisdictional scan has been completed. As indicated in the chart below, the OCIO has been unable to identify a Canadian jurisdiction where the duty to document has been included in legislation. There have been other countries that have included it however not using the “duty to document” terminology.

Jurisdiction	Reference	Findings
Canadian Provinces/Territories		
Government of Canada	<i>Library and Archives Canada Act</i>	No Duty to Document
	<i>Financial Administration Act</i>	Specifies the requirements to keep financial records
	Access to Information Act	Proposals have been made to amend this legislation but there has been no specific duty to document section included to date.
British Columbia	The <u>Document Disposal Act</u>	Discusses requirements for documenting the disposal of records and information. Does not include duty to document. There is new legislation that has passed the first reading the <i>Government information Act</i> which will replace the document disposal act. The proposed legislation removes penalty for violation.
	<u>Government Information Act</u>	This legislation is on its first reading. It does not specify Duty to Document. Responsibility of head of government body section 17.1 “The head of a government body is responsible for ensuring that an appropriate system is in place within the government body for managing and securing government information.”

Jurisdiction	Reference	Findings
Alberta	<u>Government Organization Act</u>	The Lieutenant Governor in Council may make regulations (a) respecting the management of records in the custody or under the control of a department, including their creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation, destruction and their transfer to the Provincial Archives of Alberta
	<u>Government Records Regulation</u>	Section 4.1 The Minister is responsible for establishing a records management program. Section 4.2 For the purpose of providing the details for the operation of the records management program, the Minister may establish, maintain and promote policies, standards and procedures for the creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation and destruction of records in the custody or under the control of departments and for their transfer to the Provincial Archives of Alberta.
Saskatchewan	<u>Archives Act</u>	No Duty to document
Manitoba	<u>The Archives and Recordkeeping Act</u>	No duty to document
Ontario	<u>Archives and Recordkeeping Act</u>	No Duty to document
Quebec	<u>AN ACT RESPECTING ACCESS TO DOCUMENTS HELD BY PUBLIC BODIES AND THE PROTECTION OF PERSONAL INFORMATION</u>	No Duty to document

Jurisdiction	Reference	Findings
New Brunswick	Archives Act	No duty to document
Nova Scotia	http://www.ednet.ns.ca/foipop.shtml	No Duty to document
Prince Edward Island	Archives and Records Act	No Duty to document
Yukon	http://www.gov.yk.ca/legislation/legislation/page_a.html	No Duty to document
Nunavit	Access to Information and Protection of Privacy Act	No Duty to document
North West Territories	Archives Act	No Duty to document
	ATIPP Act	<p>Section 7 of this act is title <i>Duty to Assist Applicant</i>. Sub-section 2 it titled <i>Duty to Create Document</i> but this is in the context of assisting the applicant:</p> <p>7. (1) The head of a public body shall make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay.</p> <p>(2) The head of a public body shall create a record for an applicant where</p> <p>(a) 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 hardware and software and technical expertise, and (b) creating the record would not unreasonably interfere with the operations of the public body.</p>

Jurisdiction	Reference	Findings
Other Countries		
Australia: New South Wales Government	State Records Act	Establishes records management obligations in section 2: (1) Each public office must make and keep full and accurate records of the activities of the office. (2) Each public office must establish and maintain a records management program for the public office in conformity with standards and codes of best practice from time to time approved under section 13. (3) The Authority may permit such departures from the requirements of the standards and codes as it considers necessary or desirable to accommodate the particular needs of a public office or class of public offices. (4) Each public office must make arrangements with the Authority for the monitoring by the Authority of the public office's records management program and must report to the Authority, in accordance with arrangements made with the Authority, on the implementation of the public office's records management program.
New Zealand	Public Records Act 2005	Establishes requirement to create and maintain records in section 17: (1) Every public office and local authority must create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice, including the records of any matter that is contracted out to an independent contractor.

Jurisdiction	Reference	Findings
		<p>(2) Every public office must maintain in an accessible form, so as to be able to be used for subsequent reference, all public records that are in its control, until their disposal is authorised by or under this Act or required by or under another Act.</p> <p>(3) Every local authority must maintain in an accessible form, so as to be able to be used for subsequent reference, all protected records that are in its control, until their disposal is authorised by or under this Act.</p>
United Kingdom	<u>Public Records Act</u>	Does not specify Duty to Document
United States	U.S. C 44	<p>§ 3101. Records management by agency heads; general duties</p> <p>The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.</p>