

## **Transcript Episode 12 Philippe Dufresne**

### **Ron Kruzeniski:**

My pleasure today to be talking to Philippe Dufresne, who was appointed as the Privacy Commissioner of Canada in June of this year. Previously, Philippe was the law clerk for the House of Commons, and I want to welcome Philippe. My first question is Philippe, just so we have a nice easy question to start, tell us a little bit about your previous career and how you got to be Privacy Commissioner of Canada.

### **Philippe Dufresne:**

Well, thank you Ron, and thank you for the invitation to this podcast. It's really a pleasure to be exchanging with you on this. I'm a lawyer, I'm from Montreal, studied at McGill University in civil Law, common Law. I've always been attracted in my professional life to legal matters and policy matters that touch the fundamental rights of Canadians. I always wanted to contribute to that. I was fortunate to work for many years for the Canadian Human Rights Commission. I believe your own background has involved human rights commission yourself, and so you would appreciate that. As an advocate for human rights, including arguing in a number of cases at Supreme Court of Canada, that was always very meaningful to me to be able to defend and promote and protect fundamental rights. I was responsible for the investigation process and the mediations and employment equity and privacy and access to information at the Human Rights Commission, which very fulfilling.

I spent a year at Foreign Affairs in our global affairs department. It was then called the Foreign Affairs and International Trade. I was a council responsible for international tribunals, international criminal court, and the special tribunals dealing with war crimes, crimes against humanity. Again, contributing to fundamental legal issues of our times. Then I was appointed as the law clerk of the House of Commons, which is really the chief legal officer advising the legislative branch and the speaker and the members themselves in terms of their rights, obligations and the way that they would be protecting their autonomy vis-a-vis the executive and the court. That, again, something that was fundamentally important to me in terms of protecting parliamentary democracy and advising and helping parliamentarians in their important constitutional role.

When the Privacy Commissioner position became a consideration for me was when I saw the increasing importance of privacy. My predecessor, Commissioner Daniel Therrien, and yourself and provincial colleagues and internationally have done a wonderful job in raising the importance of privacy, bringing it to the forefront of the attention of Canadians. It's absolutely necessary because we are seeing an evolution of technology, which means that privacy and protection of promotion of privacy really is part of everyday life.

It was seeing the importance of privacy, seeing the evolving technology and from the federal sector standpoint, seeing the need for modernization of both the Public Sector Privacy Act and the private sector, PIPEDA, I saw that this was a really momentous and opportune time for privacy. I felt that my background, both in terms of fundamental rights, in terms of being responsible for compliance investigation process and promotion, and my previous role advising parliamentary committees, I thought that I would have something to offer to this important role. I did and it's been a great honour and a privilege to have started this since June and it's been very stimulating and very encouraging to see that the team is extremely strong, extremely engaged, and so look forward to contributing in this new role.

**Ron Kruzeniski:**

As you indicated, you were appointed in June, and you've been there almost three months. Has life been interesting, busy, exhilarating in those three months?

**Philippe Dufresne:**

Oh, I think all three, Ron. I think it's always exciting, never boring the days that fill up quite rapidly. I was actually joking with my family that the days are much busier, but I don't mind because it is absolutely fascinating, important and I'm working with such great dedicated, knowledgeable, professional colleagues that it's an absolute pleasure. There's been no shortage of issues, as you know. We have a new bill presented in Federal Parliament, Bill C-27, which is a proposed modernization of the private sector privacy legislation. That was introduced, in fact, on the day where my proposed appointment was approved by the House of Commons. That is, of course, top priority for me and for my office to make sure that we can provide the advice to Parliament on this important new piece of legislation and that we prepare to be in a position to implement it.

This is a new modernized proposal for privacy legislation that will bring, if adopted, stronger enforcement mechanisms for my office, granting the commissioner powers to make orders to recommend administrative monetary penalties. It provides additional protection for minors and it also introduces an artificial intelligence and data act, which would regulate aspects of AI and algorithms to ensure that it doesn't result in biased outputs and serious harms to individuals. An important piece of legislation, so we're absolutely focused on that. But there is the ongoing work of compliance investigations, international collaboration with colleagues and national collaboration with provincial and territorial colleagues such as yourself, so it's never boring.

**Ron Kruzeniski:**

I've noticed again in that three months you have testified either once or twice in front of a parliamentary committee. I don't know in your previous position as law clerk whether you had the privilege to testify in front of committees, but what themes have you been chatting to parliamentary committees on?

**Philippe Dufresne:**

Well, indeed, I was in front of a parliamentary committee for the House of Commons on access to information and ethics this August. I was invited to discuss the issue of the RCMP's use of technology that could what's called on-device investigative tools. These are technologies that allow the RCMP to collect private communications such as texts and emails sent or received from cell phones. An important issue and appeared there to discuss the privacy implications, in particular, the fact that in this instance the development of this tool had been done by the RCMP without consulting my office, whether my predecessor, Commissioner Therrien or myself. This was an opportunity for me to reiterate to the parliamentary committee my office's view and my view that consulting the Privacy Commissioner, ensuring the preparation of a privacy impact assessments when developing new tools that can have privacy implications, that that is essential. That that has to happen.

It has to happen because it not only protects and promotes privacy, but it also enhances trust and it avoids Canadians having doubts or being concerned about the way things will take place. It may well be that new tools are absolutely appropriate, but it can give rise to unnecessary concerns if the appropriate consultations and processes are not done. I reiterated that advice that the privacy impact assessment should in fact be a legal obligation under a modernized version of the Privacy Act. Currently, it's not and it is only a policy requirement by the Treasury Board to public institutions, but as we saw in this

instance, it was not complied with, and so reiterated that advice. To your first questions in terms of whether this was a first for me, it wasn't. In my role as law clerk of the house, I had many, many occasions to be called in front of parliamentary committees.

This was a key part of my job to advise committees to advise parliamentarians in terms of their rights and obligations, the powers of committees, legal implications and so on. This is something that I've always enjoyed doing because it goes to the fundamental role of parliamentarians who need to be able to legislate, deliberate, hold the government to account. They need input from experts, and the privacy commissioner plays that role. I was privileged and happy to do so, although it was a little bit earlier than I thought it would be, but the team stepped up and I think we provided a helpful submission.

**Ron Kruzeniski:**

As you appeared they would've just said, "Welcome back."

**Philippe Dufresne:**

Well, they did. They did privately and I think they conveyed that publicly.

**Ron Kruzeniski:**

Observing from a distance, you've certainly been busy in that first three months. Maybe this is an unfair question, but I think most Commissioners as they get into the office, they sit back and say, "Well, what would I like to achieve when my term is over?" Have you started to formulate those long-term goals, things that you might want to say, "Well, while I was Commissioner, here's what I was able to achieve,"?

**Philippe Dufresne:**

I have, Ron, and in fact one of the great things of the process for appointment of the Privacy Commissioner of Canada is that there needs to be a selection and recommendation from cabinet, but it needs to be approved by a vote of both houses of Parliament. I think that's very important because it ensures that the agent of Parliament who will serve those both houses in terms of promotion and protection of privacy has the support and trust of both houses, but it also allows visibility and early statements from the proposed appointee. I appeared before the House committee, I appeared before the Senate committee in June prior to the appointment, and I shared with those committees, and I've shared since that my vision for privacy at this stage at least had three components. One was privacy as a fundamental right, ensuring that this is treated to the level that it deserves legally, constitutionally that is of fundamental importance to Canadians.

The second was that it was privacy and support of the public interest and Canada's innovation and competitiveness. That means privacy is not an obstacle to public interest, and to innovation, and to using technology to help Canada and Canadians. The third is that privacy as an accelerator of Canadian's trust in their institutions and in their participation as digital citizens. Again, this notion of by protecting privacy, we generate greater trust, we allow Canadians to use those tools to participate in the digital economy, to contribute to it, knowing that their fundamental right to privacy is protected. That's my vision at a high level and I look at issues through that lens. When I appeared in front of the ethics committee on the use of spyware by the RCMP, I focused my submissions based on these three themes. In terms of concrete outcomes that I would like to see during my term, certainly want to see the two pieces of legislation modernized in private sector privacy act and public sector privacy act to follow.

Obviously, it's not, the timing of that is not up to me, but it's up to government and parliamentarians. But ensuring that as Privacy Commissioner I have contributed strong submissions to those bills and making sure that they are reflective of the fundamental right to privacy and the elements of the vision.

At the level of my office, I want to make sure that we are ready to implement those new bills that we could bring the OPC in terms of these new regimes with these new powers. It's going to require reviewing our processes and ensuring that we have the right structures in place to deliver for Canadians on that, and to build on and continue the role of the OPC as a Canadian and international leader in privacy, again to increase understanding of privacy by Canadians and by the international community. Perhaps one element that I care about also is education and awareness and understanding, particularly in the sector of youth, to make sure that the next generation, the current generation really have a good understanding of privacy and the importance of protecting it.

**Ron Kruzeniski:**

Again, in this last three months, have you begun to develop any thoughts about the direction the country is taking or should take when it comes to digital identity or digital ID, also sometimes referred to now as digital credentials? Any thoughts in that particular area?

**Philippe Dufresne:**

Well, this is one of the items on the agenda for our meeting in St. John's later this month. The Federal Provincial Territory Privacy Commissioners will be discussing this, and it's a perfect example, I think this initiative of the three elements of the vision that I described earlier on. In developing this tool, and absolutely this tool is something that could be very useful and effective for modernizing government services to simplify access to those services. It's good for the public interest and privacy is not an obstacle to developing these things. However, privacy as a fundamental right means that we have to consider the impacts on privacy at the outset. When developing this or any other tool, we have to ensure that those implications are identified, that they're mitigated, that they're known and understood, so why and how will the information be collected, used, or disclosed and retained?

This is important to be addressed. This would go to privacy impact assessment and it would go to ensuring data minimization, proportionality, and necessity in terms of why do you need this information and don't obtain more and don't use more than you need. Doing that, to this third element in terms of trust, doing that is going to reassure Canadians that this new technology, useful as it is for the public interest, is one that they can use and they can use it knowing how their information's going to be used and for what purpose and having some control over that. It's a perfect example and I'm very happy to see the leadership of the privacy community in Canada looking at this, including partners in government to make sure that it's developed and implemented in a privacy appropriate manner.

**Ron Kruzeniski:**

You've outlined your visions and the three elements of it, and as you focus on that vision, do you see any particular significant challenges to privacy facing you, the country, at this time?

**Philippe Dufresne:**

Well, I think that the challenge or the context is that technology is evolving very, very quickly and that's exciting. That's a good thing, and it offers tremendous potential for innovation and for improving the public interest. However, ensuring that we find the balance, the right balance in terms of using these innovations while protecting and promoting our fundamental right to privacy is challenging when the technology evolves so quickly. When we look at law reform, when we look at how our offices operate, we need to make sure that it's nimble enough to adapt to this evolving technology. When you think that the Privacy Act public sector is some 40 years old, the private sector privacy legislation federally some 20 years old, so these don't get amended very frequently yet technology will change many, many, many

times, sometimes in one year. We need to make sure that those legislative tools are flexible enough that they can adjust, that they incorporate principles and framework that are going to be able to evolve with the technology.

Another challenge, I think I mentioned, education and awareness. I think that we are living in a world now where the use of technology is ubiquitous and there seems to be a greater comfort with sharing personal information in open spheres. I think this is something that I will want to reflect on and see how we can promote greater awareness of the need to ask questions and to be aware of how and why we are sharing our private personal information. I think this is something where different demographic groups might see it differently. I have heard that certainly some groups may be more concerned about who it's shared with than the fact that it's shared with more broadly through social media sites, and so that's going to be important.

It's also going to be a challenge and an opportunity for my office and others to adjust to changing legal frameworks to the new powers and responsibilities that we may be granted. Making sure that this system that we're able to deliver for Canadians in the promotion and protection of privacy, that this is done in the right way. Lastly, collaboration and exchanges with international counterparts and partners is going to be important as well because privacy in many ways is borderless, and there's data transfers, and so we need to ensure that this can work internationally as well.

**Ron Kruzeniski:**

You mentioned international partners, and I think you just got back last week from a meeting of the G7 Privacy Commissioners. I understand this is a fairly new group. What's the purpose of the group and what issues are on that table?

**Philippe Dufresne:**

Well, this was my first participation to this group of the G7 Data Protection Authorities, the DPA as it is called. The purpose of this group was really to have the G7 Privacy Commissioners, or the equivalents of the G7 countries, get together alongside, in a sense within the G7 meetings of the ministers themselves. The G7 countries will meet annually to discuss their issues. The purpose was to have the Privacy Commissioners, the DPA, meet as well, choosing perhaps the same themes or different themes. In this instance, we followed the same theme that had been identified by the G7 digital ministers, which was data free flow with trust. We looked at that issue from the privacy standpoint and had great discussions and exchanges on what are some of the challenges, what are some of the issues, how can we ensure that in this world where there is increasingly free flows, flows of data across international borders, how can privacy authorities contribute to that and what are the key issues and challenges that together we can tackle to ensure that we're protecting and promoting privacy?

**Ron Kruzeniski:**

Well, when I think of your first three months, I get somewhat exhausted, Philippe. I'm glad you have the stamina to keep up this space and hopefully for the whole term. I just wanted to thank you very much for taking the time today and I guess to some extent being introduced to people in Saskatchewan and hopefully people outside the province listen to our discussion and just another way of introducing you to Canadians and even broader than that. I know you'll be doing lots of other things, and this is the second time we've had a chance to talk and I look forward to meeting you next week in Newfoundland.

**Philippe Dufresne:**

Thank you so much, Ron, for this invitation. It was a pleasure to have this second long chat with you and it was as engaging as the first. I too, I cannot wait to meet you in person in Newfoundland. Until then, all the best and thank you so much for this kind invitation.

**Ron Kruzeniski:**

Thanks very much, Philippe, and safe travel.

**Philippe Dufresne:**

Thank you.