

Transcript Episode 2 Diane Poitras

Ron Kruzeniski:

It is my pleasure today to be talking to Diane Poitras, who is president of the Access to Information Commission of Quebec. The Parliament of Quebec has passed Bill 64, and that's what we're going to be talking about today. But briefly, I need to tell you about Diane. She is the president of the commission. Prior to that, she was a member, but when the former president retired, she was then appointed as president of the commission. I have known Diane for some six or seven years and have met at federal provincial meetings, and I have great respect and admiration for her abilities, and I really thank her for agreeing to do this podcast today. Welcome, Diane.

Diane Poitras:

Thank you, Ron. It's a pleasure to be here.

Ron Kruzeniski:

So, for those who have not been following Bill 64, and many of us have, what is the bill intended to do and what are some of its main goals, Diane?

Diane Poitras:

Yes, thank you, Ron, for that question. Bill 64 modernizes the privacy framework applicable to the public and private sector in Quebec, and it's a long-awaited reform of our legislation, and it's a major one. For a reminder, our public sector legislation was adopted almost 40 years ago, and our private sector act is almost 28 years old. So, these acts needed to be modernized to meet the privacy challenges of the digital world we live in. Modern, strong privacy laws like you know provide the necessary guidelines to strike a balance between the possibilities offered by technology and the fundamental rights of citizens and consumers. Bill 64 aims to strike that balance. In a nutshell, I would say that this new legislation has a major GDPR influence, that is the European General Data Protection Regulation. Although a few changes are in line with federal legislation, PIPEDA.

And it might be of interest to your listeners to underline that it maintains the right-based approach of our current law in Quebec. That is, privacy as a civil and fundamental right. A few notes calendar-wise, the bill was first introduced in June 2020. Special consultations by the Committee on Institutions of the National Assembly took place the following fall. More than 160 amendments were made during the clause-by-clause consideration that took place at the beginning of 2021. The bill was finally adopted last September, but it will come into force in phases over a two-year period, even if a few will come into force next year. The day to remember for most of the new obligations is September 2023.

Ron Kruzeniski:

So, Diane, when legislation is introduced, it usually has some things that Commissioners like and a few things that Commissioners don't. What would you say are the five or so changes in Bill 64 that will have the most positive impact on privacy and access to information in Quebec?

Diane Poitras:

That's an excellent question, Ron. There are many new obligations that will have a positive impact on privacy, but I guess I would say that the introduction of the accountability principle might have the biggest impact. Because at the end of the day, it is meant to help companies and public bodies develop a

privacy culture and to make sure that adequate privacy governance is in place, and that's the foundation for building privacy-friendly practices in any organization. The act provides that the person exercising the highest authority in an organization must ensure that obligations are implemented and complied with. This person can designate a privacy officer. The act also provides that governance policies and practices regarding personal information must be adopted and implemented. They must provide a framework for the keeping and destruction of information and a process for dealing with complaints regarding the organization's privacy practices.

A summary of these policies must be published on the organization's website in plain and simple language. Another feature I would include in the accountability principle is mandatory privacy impact assessments in several situations. One being for any information system project or electronic service delivery project involving personal information. The second set of changes, I would say will have a significant impact, is mandatory breach reporting. The act provides that when a confidentiality incident presents a risk of serious harm to those impacted, an organization must promptly notify our office and the victims of the incident. Organizations must also take reasonable measures to reduce the risk of harm and to prevent new incidents of the same nature. The third important set of changes, I would say, is the changes relative to consent.

Those changes are made to encourage and foster meaningful and informed consent. For example, when consent is required, an organization must specify each purpose in clear and simple language separately from any other information provided to the person concerned. So, Ron, you notice that it's the second transparency obligation that is meant to be in plain and simple language, and that's to put an end to long and complex terms of service and consent forms. Organizations will also be required to assist the individual in understanding the implications in terms of the consent requested. And a very interesting feature we were asking for is the need to have expressed consent when it concerns sensitive personal information like health information, biometrics, or any other private data that imply a high expectation of privacy.

Then another welcomed addition that will have an impact on privacy are new obligations for organizations regarding the use of some modern technologies or purposes like AI and automated decision-making, profiling, biometrics, or geolocation. For example, anyone who collects personal information using technology that includes functions allowing the person concerned to be identified, located, or profiled, must inform the person of the use of such technology, and these features can only be activated by the user if he wishes to do so. So it's a privacy by default principle. It's also interesting to note that the act provides for new rights for individuals like data portability, the right to object to the use of personal information for solicitation purposes, and a right to ceasing disseminating information to de-index or re-index hyperlinks. It's a form of a right to be forgotten, but it is limited and subject to certain conditions, and there's also a private right of action that allows individuals to bring claims against enterprises for injury resulting from the unlawful infringement of a right.

And last but not least, the bill provides for enhanced enforcement tools for our office and for important fines and penalties. For example, the bill introduces the possibility for our office to impose administrative monetary penalties for a maximum of \$10 million or, if greater, 2% of worldwide turnover. And penal fines are increased to a maximum of \$25 million, or 4% of worldwide turnover. So, I think this sends a clear message to the private sector of the importance of having privacy-friendly practices. We're conscious that the new powers granted to our office and a possibility to impose these important fines and penalties are a source of concern for some companies.

But I would like to say that we will continue to use with discernment the various tools at our disposal with the sole objective of promoting compliance with privacy legislation. Our office knows the importance of a preventive and educational approach, especially in the first few months of

implementation, because ultimately what's important is that citizens' privacy be respected and that organizations comply with privacy legislation, not that we issue orders, impose important penalties, or institute penal proceedings. But in a data-driven economy and in light of some actual practices, these tools are important to prevent companies from ignoring privacy requirements and consider low penalties as just the cost of doing business.

Ron Kruzeniski:

So, Diane, as I kind of hinted before, when changes are made to an act and the commission has to enforce it, some provisions will get in there that create challenges. Are there any changes in the legislation that you have concerns about?

Diane Poitras:

Oh, of course, Ron. There's always a few tiny things here and there that we're concerned about. I would say in the public sector there's an important shift towards mobility and valuation of data without consent or proper controls and transparency. Although we acknowledge the fact that some users of personal information in the public interest or for the common good without consent are legitimate, they must remain exceptions and be well-defined in legislation. Also, government departments should have to be transparent about these initiatives and demonstrate their accountability on the privacy issues they raise. As far as the private sector goes, I would say that some concerns to us is an increase of situations where personal information can be used, communicated, and retained without consent. Although a lot of these provisions are legitimate, some of the wording is vague and could lead to abuse.

One example is a company will be able to use personal information without consent for purposes consistent with the purposes for which the information was collected. And finally, we also have some concern with the provision allowing public and private sector organizations to retain information that is anonymized. Like you're aware, Ron, most experts say that there is always a risk of re-identifying a person eventually. So this could undermine the obligation to destroy personal information when the purpose for which it was collected is achieved and also lead to important breaches that will affect citizens and customers.

Ron Kruzeniski:

So following kind of along the same line, is there anything in the bill that you recommended or hoped that would be in Bill 64 and it just wasn't there?

Diane Poitras:

Oh, yes. Well, it's partially there. I would say privacy regulation for political parties and independent oversight to verify their compliance with these rules. The Cambridge Analytica data scandal shed light on how personal information can be used to influence elections and democratic process. And as you remember, Ron, Canada's Information and Privacy Commissioners have called on their respective governments to pass legislation requiring political parties to comply with globally recognized privacy principles and to ensure that Canadians have a right to access their personal information in the custody of all political parties.

Unfortunately, Bill 64 provides that only provincial political parties will be subject to some privacy principles. They will have no obligation to destroy personal information, and a person will not have a right to access their information. And municipal parties will not be subject to these obligations. So definitely a missed opportunity there.

Ron Kruzeniski:

So, organizations, I guess mainly in Quebec, but probably those that do business in Quebec, what should they be thinking about or preparing first? In other words, where should they start along that journey?

Diane Poitras:

I think that's a question a lot of businesses are asking. That's a good question. I would say the first thing to do is to make sure you know your current privacy obligations and those that will come into force in the next three years. We launched a dedicated section to Bill 64 on our website and we'll publish more information in the coming months. We will also publish guidance and other tools to help organizations with compliance.

The second thing to do, I guess, would be to designate a privacy officer or even a privacy team for larger companies. This person or team should start by obtaining a complete picture of the personal data held by the organization by making an inventory of the personal information it holds, noting the purpose of its collection, how they are used and by whom, their support, and who is responsible, for example, for their management, who has access to them, and why and when they are expected to be destroyed. This work will be essential to implement many obligations and to prioritize some actions. So definitely a good place to start.

Ron Kruzeniski:

So, you may have partly answered this last question, but for those people who are interested, where might English speakers and, in turn, French speakers find a really good summary of Bill 64?

Diane Poitras:

You can find good summaries made by law firms by searching Bill 64 on the internet, especially changes for the private sector. And you can also find a Q&A about Bill 64 on Canada's Privacy Commissioner's office's website, although it was written before all the amendments made during the clause-by-clause consideration. For those interested in learning more about our recommendations made to parliamentarians on Bill 64, it's available on our website, but in French only. And finally, please come visit our website regularly for updates on the implementation of provisions of the bill and new tools for organizations.

Ron Kruzeniski:

Well, that is the main questions I have, and I want to thank you for taking the time to do this. And I believe a very succinct summary of the significant changes will be of help to people doing business in Quebec or wanting to know what Quebec has done in access and privacy. And to some extent, I think it will be a guide for the rest of us when we go back to amend our legislation. So thank you very much for doing this today, Diane, and thanks for taking the time.

Diane Poitras:

Thank you, Ron, for this opportunity to talk about a major privacy reform in Quebec.