

Transcript Episode 20 Diane McLeod

Ron Kruzeniski:

Today, I'm talking to Diane McLeod, who is the Information and Privacy Commissioner for Alberta. I've previously talked to Diane in this podcast when she was Commissioner in the Yukon. And when she was appointed in Alberta, I usually like to talk to New Commissioners to find out what their goals and objectives were. I realized that it hadn't been all that long ago that I talked to her as Commissioner in the Yukon, but all of a sudden, time has gone by and Diane has been in the office over a year now and I thought this is a great opportunity to talk to her about moving to Alberta and becoming familiar with a new role in Alberta and just talking about all of that. So Diane, first of all, for those who didn't listen to the first podcast we did, can you tell us a bit about your background and how you ended up in Alberta as a Commissioner?

Diane McLeod:

Certainly. So it's nice to be back on your podcast, Ron. I appreciate the opportunity here as Alberta's Information and Privacy Commissioner and while I was in Yukon. My background goes far and deep into the world of access and privacy. I began doing this work in the 90s when our first public sector legislation went into effect and worked for Calgary Health Region at the time, went to law school, got my law degree, worked in the private sector helping private sector businesses coordinate their privacy policies in British Columbia. And then I came here to Alberta, worked as the Director of PIPA in this office in 2011, and then I was appointed to the Information and Privacy Commissioner among other hats I wore in Yukon starting in 2013, which I stayed in that position until 2022 when I was appointed as Alberta's Information and Privacy Commissioner. And Alberta is my home and I'm very, very happy to be back and working for the people of Alberta and my friends and family.

Ron Kruzeniski:

Great. And now when you were in the Yukon, you were not just Privacy Commissioner, but you were also Ombudsman and it's interesting now, I guess you have one role instead of multiple roles. Is it easier just to focus on one thing?

Diane McLeod:

It is. I was also the Public Interest Disclosure Commissioner in Yukon when that legislation came into effect, so I had about four pieces of legislation I was dealing with there. But yes, information and privacy is my passion. I'm happy to be doing this work and in the world of the digital economy and the significant transformations in computing technology, it's become a very fascinating field. Yet again, it's just an evolution of really interesting things. But I will say that as Ombudsman, I'm very blessed to have been an Ombudsman for as long as I was because I certainly learned a lot about procedural fairness. And as we look at our processes here, we're looking closely at all of those things to make sure that we're acting in a procedurally fair manner.

Ron Kruzeniski:

And that may lead into the next question. So you've been on the job over a year, just about a year and a half. How have things gone during that year?

Diane McLeod:

Yeah, it's actually been a year and 16 days.

Ron Kruzeniski:

Oh, it is just over a year.

Diane McLeod:

It's just over a year, so I can't believe it. I know from doing this work in Yukon, that time just flies. So it's been going really good. I had some specific goals when I got here and within the first year, one of my focuses was going to be on my house, making sure that we are looking at our procedures and trying to address our significant backlogs, and there are significant backlogs here. I have been working closely with my team here. We have taken a deep dive into all of our procedures. One thing that I'm fortunate to have is because of my background in this work, I have done all of the things that my staff do in the office, so I really have that ability to understand what the processes are and ways to improve them because I've had to do the same in my past.

So we have done some restructuring. We are really focusing on our informal case resolution to try and speed up that process, eliminate unnecessary work such as writing too much, doing more on the phone and trying to get settlement similar to the processes I used in Yukon. In fact, I adopted those processes that we're incorporating here and our self-reported breaches. So there are a number of things that we're looking at. We've got a lot of projects underway to get that work up and running and we hope to launch that in the fall.

Ron Kruzeniski:

So, my next question is what have you been able to achieve in the first year? And you partly answered that. I'm going to digress a bit and question you about informal resolution. And I have found here in Saskatchewan being a great believer in mediation is that it is challenging with this type of work because the public body and the applicants seem to dig in quite quickly. Are you having some success with informal resolution and making it more of a win-win for both parties and getting things resolved sooner?

Diane McLeod:

That's the goal, Ron. So in Yukon, we actually designed an informal resolution process that really involved my investigators being on the phone with the public bodies, or the custodians as the case may be reviewing the decisions that they've made in terms of access to information requests and refusals to provide information and applying certain exceptions. My staff there would make sure that they understood what the law is, they would explain it to the public body and let them know whether they think they got it right or they're wrong, try and get them to change their mind if they think they got it wrong.

And then also, to convince the applicant that the decisions that they are making are accurate. So we had a lot of success there. I would say that I think we were up to about 97% success rate, and although it's a smaller jurisdiction, the issues are the same and the amount of investigators we had correlate more or less to those that we have here. So we're working on those processes here in Alberta. And even if we get them in place, it's not just what we do, it's also how the bodies that we're working with respond and are willing to work with us. So I'm optimistic that we will have some success with this, but it will take some time to see real results.

Ron Kruzeniski:

Diane, many Commissioners in their first year develop a set of, and I'm going to use different phrases here, strategic priorities, goals, things that they want to achieve by the time their term is over five years

or seven years from now. Have you developed any of those? Are you able to share any of those priorities with us?

Diane McLeod:

Yes, absolutely, Ron. In fact, while I was going through the recruitment process, I had set out what my vision is for the office here in Alberta and in preparing for the recruitment process, in the meetings that I had with the various groups along the way, I guess was the Committee and Public Service Commission, I did a lot of homework on looking at what is happening in the Alberta economy. And of course, having been an Albertan and I am an Albertan, I have some knowledge as to how they're very entrepreneurial, very innovative. So essentially, when I was reviewing all of the government documents that they were putting out, there was a clear focus on use of innovative technologies to improve services delivery, both in the public and the health sector. And of course, we know that that's being used quite extensively in the private sector.

What I informed the committee of is that I had a two-pronged approach to my term that I wanted to work towards in terms of my goals, and one of them is to support innovation through the use of technology. So I informed the committee that my office has a role to play in supporting this work in three key ways. One of them is by creating alliances with industry leaders who are doing this work and working alongside them to build privacy into the design and use of these technologies, by facilitating the adoption of privacy management programs more broadly within the public, private, and health sector organizations to establish a trusted network that will allow greater information sharing across these sectors and position these organizations to use innovative technologies to enhance services delivery. And by working with government to design privacy and access to information laws that will facilitate innovation while preserving privacy and access rights through the use and control measures that will achieve this balance. And the second one is to shift the office being a primarily reactive organization to adopting a service delivery model that will more proactively support compliance.

So to that end, I created an engagement stream, I guess recently, and our focus is to engage the public, private, and health sectors and the technology sectors in Alberta and help them understand what privacy is and look at ways that we can build privacy into the design of that technology and those services. We're also looking at ethical frameworks and some of the work that government is doing on data strategies and working alongside them to build the right privacy framework in order to support that strategy. And we are also looking at the legislative landscape in Alberta. I've met with the Minister of Innovation and Technology to talk about the goals of government as it relates to the use of this innovation and technology in the design that I referenced earlier, and I emphasized the need to look at all three pieces of legislation. They have to work somewhat cohesively in order to facilitate that innovation because it occurs across all three sectors and the data is sitting within all three sectors.

Ron Kruzeniski:

So, the next question is what keeps one awake at night and going to start by, for me at the moment, it's the number of articles and headlines about AI or a generative AI. And I say, "I don't know enough about this." And I read an article and I say, "Oh my, could it lead to this?" And say, "I need to understand it, but I don't." And then there's the provincial, the national, and of course the international implications. And I think, "Well, I only have to focus on the provincial implications." So what issues challenge you at the moment and your office and maybe cause you to lose a bit of sleep at night?

Diane McLeod:

I think you touched on the one that's probably on all the Commissioner's minds in Canada and elsewhere is the advent in the use of artificial intelligence and the speed at which it's taking root and being utilized by businesses and healthcare organizations and governments of all sizes. And the technology is rapidly advancing and the law, as you know, Ron, is far, far behind. So yes, that worries me. I have certainly taken a deep dive into trying to understand artificial intelligence and all of the framework that needs to go along with it to support responsible use and innovation.

I'm really fortunate to have some really, really intelligent staff who seem to understand this work and are able to relay it to me in terms that I can understand so that we can make plans and try and make recommendations to promote that responsible use. And the thing that probably bothers me the most about it is even if we regulate in that field, I think it'll be a challenge to try and rein it in. I do think that there needs to be standards and regulatory oversight in that technology field, which doesn't exist right now, which seems to be allowing this unfettered advancement in technology without consideration for the human impacts.

Ron Kruzeniski:

So, pursuing that a bit more, like I find and then as I read things and say, "Oh, that's an international issue. Okay, maybe that's a national issue." The question is then when we think about legislation, is there legislative provisions that the provinces can introduce to regulate, have oversight over this issue, or do you think it really is national and international? Any thoughts on that?

Diane McLeod:

I do have thoughts on that. So we are a province that has the private sector legislation, which one of four in Canada and because of that, we actually regulate to protect Albertans. So even though we might be dealing with the big, let's just use the Googles and the Facebooks of the world, as long as our Alberta residents are interfacing with these organizations, they're protected by our local legislation. So when we're designing PIPA, which we're currently going through the review process with PIPA, and we're looking very closely at many, many, many issues that we're trying to put forward for the committee's consideration for the protection of Albertans because our law can protect them and we can hold those organizations to account when they're processing the data of our citizens.

Ron Kruzeniski:

And you feel legislation can be developed that would help protect Albertans, even if all the servers are in San Francisco, or Texas, or anywhere else in the world?

Diane McLeod:

Correct. So we do that already. Under our Personal Information Protection Act, there is mandatory breach notification and if information is collected and disclosed in Alberta. So even if the servers are in another location, if the collection occurs in the province of Alberta, so the individual is within Alberta, we can actually hold them to account and they have a duty to report to us, and they do.

Ron Kruzeniski:

And they do?

Diane McLeod:

And they do.

Ron Kruzeniski:

So, you mentioned some consideration of legislator proposals. Now, just this week in Saskatchewan, the government has issued a consultation on the Saskatchewan Employment Act, which is basically the labour standards legislation for the province. And we don't have an equivalent to your PIPA, so I'm at the moment really looking at what we can do through labour standards to protect employees that aren't protected right now. But this isn't about Saskatchewan, this is about Alberta. What legislative initiatives are starting in midway or almost finished in Alberta in terms of achieving legislative change?

Diane McLeod:

So, in terms of the employee protection, so our PIPA does apply to employee personal information of private sector organizations, and then that would include employment in even, let's say for example, a physician's office. Even though they're subject to the Health Information Act, they would be covered by PIPA as it relates to their personal employees. And then of course, we have the FOIP legislation, which also applies to employees of public body. So we do have employee coverage in the province. Things are changing in terms of employee privacy, largely as a result of the pandemic and people working remotely and then the use of technology to monitor some of that activity. Those conversations have not really come up much in Alberta. I think they probably need to be. We're so far behind in our files that we're getting to some of the things that were happening in the days of COVID. So it's an important thing to think about. Employees need to be protected. And I'm curious, so are they proposing anything in your labour legislation to protect privacy of employees?

Ron Kruzeniski:

At the moment, the consultation paper is drafted in such a way that they're posing questions, and my recollection is I don't recall a specific question about protecting employees, although I should go back and look. And I am working on a submission. So they're just at the posing question stage. They're not at the stage of having made proposals. I suppose that will come six months or a year from now, so we're not quite there yet.

Diane McLeod:

Yeah, interesting. It'll be interesting to see what happens with that.

Ron Kruzeniski:

So, thinking the earlier question, you did say you were developing ideas or approaches re: PIPA. Is that in context of a consultation in Alberta or just things you're working on in the office whenever the legislation comes up for review?

Diane McLeod:

PIPA is up for review right now. Actually, the committee was struck last fall, I believe, and we actually attended the committee and gave a technical briefing. So my office and the Alberta government office that deals with that gave the committee that briefing. However, we had an election, as you know.

Ron Kruzeniski:

Yes.

Diane McLeod:

So, the committee was disbanded, and it has yet to be reformulated, so we're standing by and waiting for the committee to get underway again and we're working on putting together our submissions. So we have a lot of pieces of that puzzle that we're working on right now. It's very, very complex, Ron. As you said earlier, talking about artificial intelligence and looking at the frameworks and trying to come up with recommendations that in this day and age and in this economy and where we're headed will protect Albertans. It's complex. It's very complex.

Ron Kruzeniski:

So, when you make that submission, will it just be to the committee in private or will it be public? Can I read it and say, "Oh, I should consider talking about this in Saskatchewan?"

Diane McLeod:

I believe that it is public, Ron. I believe that we do make the submission to the committee, but I do believe that we typically publish that information on our website as well. I would need to confirm that, but I believe that that's the practice because I think it's important for Albertans to hear what we have to say and why we have said it so that they can understand the context in which we are making these submissions.

Ron Kruzeniski:

So, my last question is, okay, a year and 16 days have passed quickly and all of a sudden, your term is coming to an end. And when that happens... Well, I know there might be the renewal, but when the term is really, really over, what would you like to think that you've achieved as Commissioner in Alberta?

Diane McLeod:

Change. I mean, I can say that with certainty because that's what I did in Yukon. I went in there with a mission to make change and I did make change, and it was positive. It was positive change and I hope to achieve the same level of success here in Alberta. I think I have a really good strategy and it's a bigger province, so it's a little bit more challenging to navigate all the pieces that you need to put together to create the vision that you're trying to achieve. But I have hope because I have really great people and we have some really great initiatives, and I think that we're already starting to make some good connections and it's never an easy walk. Sometimes you have bumps along the way, but I am quite good at establishing connections and intend to do that to achieve my vision as I laid it out, and to just make sure Albertans understand what their privacy rights are, what the risks are, and to help protect them by creating a bit of a framework. So that's my really, really lofty goal.

Ron Kruzeniski:

So, are you on a five-year term or seven-year term?

Diane McLeod:

I'm on a five-year term.

Ron Kruzeniski:

It can be renewed, right?

Diane McLeod:

It can be renewed, yes.

Ron Kruzeniski:

Okay. Well, so you probably have about nine years to accomplish all of that.

Diane McLeod:

Well, it took me nine years to do that in Yukon, so yes.

Ron Kruzeniski:

So, Diane, I want to thank you for doing this and doing this the second time around. I wanted to say when that nine years is up, I'd like to interview you again to see if you accomplished it all, but there's only one problem. I retire in June, so I won't be around to interview you that third time. But anyway, good luck with all those goals.

Diane McLeod:

Well, thank you so much, Ron. And again, I really appreciate the opportunity to chat with you. It's always a pleasure and you'll be missed when you retire, Ron, that's for sure.

Ron Kruzeniski:

Thanks, Diane.