

Transcript Episode 22 Sharon Polsky

Ron Kruzeniski:

Today, I have the pleasure of talking to Sharon Polsky. Sharon is the president and CEO of the Privacy and Access Council of Canada, short form PACC. She has been in that position as president since its inception and welcome, Sharon, to our podcast today when Regina and Calgary are one of their coldest days that we've had for a long time. Thanks for doing this.

Sharon Polsky:

Oh, it's a pleasure. Thank you so much, Ron, for the invitation.

Ron Kruzeniski:

So, I'm going to start, Sharon, by asking you, tell us a bit about yourself. How did it come about that you became involved with PACC? And I think that's very much integrated with how PACC came into existence. So, tell us about Sharon and how PACC got started.

Sharon Polsky:

Well, you asked me that and it makes me realize that, by the time I was asked to become involved in PACC, I already had about 20 years of experience in law and privacy and data protection consulting. It was about 2001 or 2004, I was invited to join the board of PACC's predecessor organization, the Canadian Association of Professional Access and Privacy Administrators, CAPAPA.

Ron Kruzeniski:

Oh.

Sharon Polsky:

Yeah, it's a mouthful, I know and that was part of the problem. It had been started several years prior by a few academics from the University of Alberta and some public sector FOI officers in Alberta and the objective with that organization, as with PACC, was to improve the professionalization, the standing of people who do this work. Like the Privacy and Access Council of Canada, that organization was volunteer run, it was non-profit, but the problem was it was incorporated under the Societies Act of Alberta and that legislation requires that every decision had to have a vote of the entire membership. And you know how difficult it is to get two or three people to agree on a meeting time or a change in a process, now multiply that by members across the country and it simply didn't work. And we also knew by that time that, the name the founders had chosen, it didn't represent who its members were. They were much more than administrators and the acronym was difficult to say.

So, I proposed that the organization be renamed and reinvented under federal non-profit legislation and the board agreed. Really, the biggest change was the name and that things could get done and move ahead efficiently. So, it's been a long journey but, along the way, not only have I worn the hat of president and CEO of the Privacy and Access Council of Canada, but I have always had my own company, a small consultancy so that gives me perspective from both sides of the fence what is going on as a practitioner, what practitioners in access and privacy need. And because most of the people who are members of the PACC have regular full-time jobs, they have basically been muzzled as have so many people these days. They have opinions, they have views but they can't say anything because there's a fear of retribution and job loss and no one can afford that. Because I own the company and because

PACC is volunteer and where I am in my career, I have a little more latitude so I can speak on behalf of the organization and its members and that is increasingly important. So, PACC itself has been around for, I don't know, more than 10 years but, really, it's legacy so far is since the beginning of this century. It sounds odd to say that.

Ron Kruzeniski:

Yeah. So, what caught my attention before Christmas is you sent out a letter regarding your thoughts about 2023 and I thought, oh, this is interesting and it'd be good to talk to Sharon and here we are today. So, knowing that you wrote that letter and you focused a bit on the highlights of the previous year, what were the highlights of 2023 from an access and privacy point of view?

Sharon Polsky:

I think it's easy to agree the technology that was foisted on very much an unaware public in the COVID era has had some profound effects on us, on practitioners personally, for sure, but professionally and also in a lot of ways that a lot of people don't yet even recognize. The technology, we've all heard about ChatGPT and how wonderful it's going to be or that it's going to be an existential threat to humanity or ... And that comment, interestingly, was put out by the people who actually develop it. The technology, on one hand, can make our lives and our work that much easier, it's a benefit, terrific but it has some serious risks that it's not comfortable to talk about risks. We point these things out so that our members can benefit so that they can get their work done.

So, in 2023, from a privacy and access perspective, artificial intelligence is the easy ... That is low-hanging fruit now. From an access perspective, it's difficult to know what some AI is actually doing, what information it has ingested, how it makes its calculations so how can you provide a fulsome response to an access request. From a privacy perspective, when we have new laws coming in that essentially will require encryption to be broken, all content to be scanned by the platforms, by the ISP, by we don't even know who yet, how can you make sure that your organization, on one hand, is complying with privacy legislation while you know that, on the other hand, everything you are doing is being scanned by people and organizations and technology that you don't know and you have no control over.

So, the conflict is just starting to be recognized and that's a big part of the work that we've been doing lately is, really, it's a matter of education, not only of the members and the broader public, but of some of our lawmakers who also they don't quite get what it is and the unintended consequences of some of these ostensibly laudable laws that they are trying to bring in.

Ron Kruzeniski:

So, did PACC have any significant achievements that you're particularly proud of in 2023?

Sharon Polsky:

Well, it was a banner year for us. If we go back into history, really, it was at the beginning of the whole organization. One of the board members had realized that, even though legislation, privacy legislation had been in affecting Canada for about 20 years by that time, no one had ever defined what does it take to do this work competently. So, a research project was launched that was financed by several commissioners including the Office of the Federal Privacy Commissioner of Canada and that was to figure out the competency definition, the practice standards, code of conduct, the common body of knowledge and all of that was done.

And we launched our first privacy certification program back in 2009 but all of that became the foundation of a national standard of competency for people in the profession. As far as I can tell, as far

as our research goes, it's still the only national standard for the profession anywhere and the three designations available through PACC's Professional Certification Program, the Associate Access and Privacy Professional, AAPP, the Chartered Access and Privacy Professional, CAPP, and the Master Access and Privacy Professional, you guessed it, MAPP, are still the only ones that meet that national standard for competency.

So, that was definitely an achievement but there was also things like being invited, not only by media to comment which is important because the media plays an important role in educating the public and, when they call, not on lobbyists, not on self-interested organizations and individuals but a neutral, unbiased organization like PACC to share insights, that's important. So, that's on an ongoing basis and we always welcome contact from the media and conference organizers but we also receive invitations to appear before parliamentary house committees to speak to some of the legislation and also to speak at the United Nations Internet Governance Forum in Kyoto, Japan this past autumn. So, that was really a tremendous opportunity to speak to literally a global audience about issues that affect, not only PACC's members, but the broader Canadian public. It was tremendous.

Ron Kruzeniski:

Oh, that would've been quite an experience. By attending that, did you find that there's a commonality of issues? The issues you were talking about, other countries had exactly the same issues?

Sharon Polsky:

That's very much the case, Ron. I had some really interesting discussions with parliamentarians from Europe and some of their policy analysts. I'm sure you're well aware of the chat control legislation that they were trying to bring in and they almost did until it became embroiled in scandal but that is very much akin to some of the laws that Canada is trying to bring in. It's the same thing as lawful access when **Vic Toews** was the Justice Minister in Ottawa, what, 10 years ago, 12 years ago ostensibly to protect children because everybody wants to protect children and how can you say no to that. And I have kids too, I understand it but the way they're going about it is dangerous, frankly, and that was exactly what the European lawmakers and some Australian and other people from across the Asia Pacific region said. On one hand, we have a problem, it would be great if the laws would be enough to protect us, to protect our children but laws do not protect against behaviour. They don't change behaviour, all they do is prescribe and say what behaviour should happen, what shouldn't happen and what the penalties ought to be.

So, yeah, there's a lot of commonality. Protecting children, I think, one of the top ones, encryption, though, is behind it all. And that, whether it was the views of my co-panelist, the founder of the Tor Network, or other people or the head of Signal who they both absolutely insist, as do many other people, that encryption, end-to-end strong encryption is necessary to protect children and everybody else. Because if you break the encryption, then everything is fair game, for not only people with nefarious intent, but lawmakers, governments, other governments, governments that are lovely today but governments can change their views and what's okay today suddenly is frowned upon. And when there is no safe encryption, your thoughts, your dealings with clients if you're a lawyer, with a patient if you're a doctor, there is no confidentiality anymore, there's no press freedom, everything is at risk.

And we've seen that happen in other countries, there was some people from some of those more repressive regimes in Kyoto and some private conversations with them it would raise your hair to realize how very precarious our freedom is and how reliant our freedom is on encryption and secure communications that protect our privacy.

Ron Kruzeniski:

So, turning to 2024, and so many people have their lists about 2024, but what do you feel the major concerns, issues, problems are going to be re: access and privacy in 2024? Have you developed your top 10 list there?

Sharon Polsky:

Oh, the top 10 list is actually much shorter than that. From an access perspective, it would be wonderful if access legislation was actually substantively amended to provide a genuine, functional right of access instead of it operating the way it was written. I used to say that access in Canada is broken and then, several years ago I changed my stance, I realized, you know what, it's not broken, it's operating just as the laws were written. It gives the public bodies, typically, all the power to refuse to say, sorry, we have no responsive records, they hold all the cards. When they do provide a response, we have no way of verifying the accuracy, the validity, we have to take their word for it. They hold all the cards as I say. Unfortunately, the government in Ottawa, despite years, maybe decades now, of reports, submissions, requests begging and pleading that the law be changed, they have not yet seen fit to change the federal access laws.

The provinces, if you took a look at the secret Canada journalists expose of access in Canada, on a provincial level, it's no better and I think Alberta was one of the worst where all the departments requested for access refused. They just refuse because they can so that is a huge problem. Working to get that changed from within government, other people do that because we are not lobbyists, we do not lobby government, we advocate on behalf of our members but that's very different, we will do it from a different perspective. Part of our mandate is education, believing that a better educated public that understands their rights and responsibilities for privacy and access is better for our members and practitioners in this community. So, education is one of our constants, for sure.

The legislation that was problematic in 2023, that continues to be problematic and we are focusing significant efforts on developing commentary about Bill C-26, C-27, S-210 and others because, individually, they have their problems. When you look at them in concert, they all conspire to really, really decimate what's left of privacy, makes the practice of access and privacy all the more difficult for reasons I spoke about before. So, that's definitely on our radar and partly commentary, partly education is the technology because the people who are developing a lot of these technologies, they don't get it. They do not understand what is personal information in different places, they define it however they wish, it might be different from what's in Canada. They don't recognize that what they're developing has an impact, not only on my privacy and yours and theirs, but on how organizations or whether organizations can comply with privacy laws.

So, again, education and working with them, collaborating with other organizations to help get those messages out there. As I said, it's a short list but it's going to be a lot of work.

Ron Kruzeniski:

Now, and you may have indirectly touched on it, but in what you listed as the issues concerns, does PACC have any particular goals for 2024?

Sharon Polsky:

Well, because our mandate does have that educational component, particularly for members, keeping in mind that there's a dearth of education available in Canada that looks at the practical side of practicing in this profession. For the first time in a few years, thanks to a COVID hiatus, we had our privacy and data governance congress in Ottawa last spring, we were planning that for mid-April this year. We're

also going to be looking at the legislation and diving and doing some deep dives to prepare some extensive analysis and commentary and provide that, not only to our members, but to the lawmakers. It was interesting, when I appeared before one of the house committees in November, one of the members of parliament looked at me and it was a lovely genial conversation and he said, "I don't get what this technology is about, this artificial intelligence and how deep it goes. And some of my colleagues in the House, they were telling me the other day, they don't get it also."

So, if these are the people who are saying yes, yes, yes and pushing these laws through and admitting they don't get it, not only does it go to trust in government, but what do they think is going to happen? So, we're going to be doing more efforts to educate, directly and indirectly, webinars, conferences and it's not just open to members, it's open to the general public as well.

Ron Kruzeniski:

Mm-hmm, mm-hmm. So, you mentioned C-26 and 27 and S-210 and I want to get a few comments about each. But do you or does PACC have any particular thoughts about Bill C-26?

Sharon Polsky:

C-26, yes, and people will look at it and go, "Oh, but that applies to telecommunications and pipelines." That's on the surface but, when you read it, it does much more than just amend the Telecommunications Act. It does narrow some existing gaps with the intention of promoting the security of Canadian telecommunications systems and I think it says the critical cyber systems of services and systems vital to national security or public safety. Well, as we saw in COVID, just about anything can be declared a matter of national security or public safety. The mechanisms for identifying what can be considered, deemed national security or public safety impacts, well, we don't know because, the imprecise language in the bill, it offers flexibility to add in almost anything, there's a danger in that.

Yes, it applies to telecommunications and pipelines and some categories that were deemed national security concerns after 9/11 but those are just the start because it allows government to designate any service, any system, any class of operators that they declare as a class of operators as a vital service. And once they're designated as a vital service, then they can be required to establish and implement cyber security programs and do whatever they're told to do, it doesn't restrict it to telecommunications or what we until now have looked at as national security concerns. So, it's got a very, very broad reach. It also echoes the chat control legislation in the EU and the UK's Online Safety Act that is now law, the Investigatory Powers Act from Australia and a few others that will require all content to be scanned, messages, text, images, to find is it going to threaten national security.

Some people would say that's conspiracy theory and tinfoil hat stuff and I've been accused in the past of being a tinfoil hatter because I look forward to how these things and I look backward in history to how these things are interpreted and applied and it's to the point now, if someone calls me a tinfoil hatter, it's a compliment. I wish I was wrong sometimes but the vague language that we've seen in laws that could open the door, it opens the door to anyone really being denied service. There's huge implications from this one.

Ron Kruzeniski:

So, in a similar sense, although I guess it's a big topic, C-27 is really three bills in one. Do you or PACC have any thoughts about Bill C-27?

Sharon Polsky:

We do. We set it out in a lengthy submission to the committee but, in relatively short terms, the three parts. First of all, the title is problematic because we are all consumers. To be commodified, it's as simple as that. The title is consumer privacy. We're not all just consumers, we're much more than that. It gives way too many exemptions and opportunities for organizations to say we're going to collect information from you and about you for reasons that we deem legitimate. It gives way too many opportunities to collect and use and disclose personal information without consent, without notice. It perpetuates the current consent model that really doesn't work because ... And I remember when Minister **Bains** introduced the predecessor of C-27 and he said, "No more will we have these 30-page privacy policies, these legal documents that nobody understands and nobody reads, it's got to be simple and in plain language," which means what? We will collect information from you and about you and use it in whatever lawful manner will improve our bottom line there. You've been told, consent or go elsewhere. It doesn't help us as individuals, it doesn't give us any greater control over whether or who collects our information or what they do with it and that is perpetuated in C-27.

That's just a couple of the highlights of the first part. The second part, we'll create a new tribunal that will oversee and adjudicate the Commissioner's decisions. It infantilizes the Commissioner, which I think is abhorrent, it delays anybody being able to exercise their private right of action. The previous Federal Privacy Commissioner said that would delay our ability to exercise that right by seven to 10 years. And, once we do have the ability to exercise that right, then we have the option to hire a lawyer, take the offending organization to court, go bankrupt because our pockets aren't as deep as theirs are and, what, another seven to 10 years while they drag us through the courts. That's not much help to individuals who have been denied access or, well, whose privacy has been breached. So, that's part two.

Part three is ADA, the Artificial Intelligence and Data Act. And I stress and because a lot of people are saying artificial intelligence data as if it's the data provided or created by the AI, wrong. When the bill was introduced, ADA occupied, I think, it was 15 bilingual pages out of a couple hundred pages of the bill. When the committee was nearing the end of its hearings and hearing testimony from about 75 witnesses, that's when the minister submitted about a 30-page catalogue of possible amendments that he might consider instituting. No promises, they're possible but nobody has spoken to them, we don't know yet if the committee is going to invite witnesses, new ones, the same ones, any ones. So, in essence, there has been no public consultation yet and what we have seen of the original ADA provisions and the catalogue of potential amendments is not adequate. It does not provide privacy, it doesn't speak to so many things, it leaves so many gaps and back doors, it's not consistent with international efforts, there's problems. So, that's going to occupy a goodly amount of our efforts.

Ron Kruzeniski:

And this is a bill I don't know much about and, obviously, I should go and study it a bit but your thoughts about S-210.

Sharon Polsky:

S-210, introduced by the Senate and this is another one where it is to protect children, particularly to protect children from being able to access pornography online because that harms the children, it gives them a warped sense of what is normal appropriate sexual activity, there's a lot of problems with mental health issues. I've got some academic colleagues who have done some amazing work on this and some conversations with people working on this in Southeast Asia that I met at the UN Conference, it is a legitimate concern. S-210 though, the way it is vaguely worded, is more than a slippery slope. I think **Michael Geist** referred to it as an avalanche because it's going to require age verification. Now, there's a

whole industry promoting the need for age verification and digital identity and liveness verification and that's legitimate, they have their interests and their investors to please and their shareholders.

But to require age verification, not only from children, but from everybody because, once again, the language of this law is very vague. The discussions in Senate by the lawmakers is that, oh, no, no, it is just intended for children but that's not embodied in the bill which leaves it wide open that everybody will have to provide age verification to any internet provider, any platform, any organization that can deliver pornography, that doesn't exclude a whole lot. That includes every corporation because they have connections to the internet and their employees could access pornography. It's schools, it's everybody. And who will be collecting the information, what technologies will be used, how secure will it be or are we looking forward to a future like Brazil where hundreds of millions of people's entire profiles were available, unfortunately, through a government database.

And what do you do when everything about you that you have beautifully obeyed the law, you have complied with the law and provided all your personal information so that you can, what, get your homework done, do research for your university degree for the report you have to provide to your vice president and all of that goes sideways. It's not like changing a password.

Ron Kruzeniski:

Well, I think, 2024, there will be a lot of discussion about the three bills that you just talked about. Now, I noticed in preparing for today, I looked on your website and you are recruiting for a drafting committee. And although the deadline for that is passed, has the committee been constituted? Are you looking for a few more members? Anybody listening, should they think about it or where's that at?

Sharon Polsky:

That one in particular, that was to examine ADA, the Artificial Intelligence and Data Act, and, in particular, the proposed possible maybe amendments. That drafting team is already hard at work and we've got people from Vancouver to Eastern Ontario, several members with expertise and experience in everything from healthcare and pharmaceuticals to technology and law enforcement. So, they can look at it from broad different perspectives and that's perfect. We have a full house on that one but we are just about to announce two more drafting teams to look at these other two pieces of legislation that I was just talking about. So, if anybody wants to get in touch with me, through the website would be the easiest, go to the contact page at pacc-ccap.ca. The name confuses some people, it's a palindrome, PACC and then it's the acronym for the French version of the organization's name.

Ron Kruzeniski:

Great, okay. Well, you mentioned it earlier and I think you sound very pleased about the conference you had last year and you also mentioned you're planning one this year. Any details you want to share with people that are listening and how do they sign up if they want to go?

Sharon Polsky:

I was talking to a member yesterday telling her that we are in the throes of planning this next one. And she, I won't say cut me off, but she cut me off to say, "Well, that was great because you do it small, don't you?" And I said, "Yes, we intentionally have small conferences." Maximum 150 people, we might go to 200 and that is absolutely deliberate so that people have the confidence to be able to speak in a small group. Everybody's together, there's no breakouts because what the speakers talk about is important for everybody to learn and understand. Last year was the first year we did it since COVID, it had been annual for several years before that. We did it in Ottawa at the University of Ottawa, it was sold out full

house and it was terrific. We also invited law students, several attended and that was for them to attend gratis. We do that each time.

One other thing we do is, instead of buying gifts or trinkets for the speakers, we select a charity each year and make a donation and, this past year, we made a fairly sizable donation to the Ian R. Kerr Memorial Fund. Ian was a law professor at the University of Ottawa, really a brilliant, nice guy. He died way too young from cancer a few years ago and this fund was set up in his honour to provide scholarships and bursaries and funding for people who come to study law at the U of O and that's a way of us promoting the next generation, helping the next generation of privacy and access professionals. So, we are, as I say, planning for the next one in mid-April and we didn't have the time this past April, scheduling difficulties, we were limited to two days. This year, we're going back to three full days of plenaries and we always have the regulators roundtable where the information and privacy commissioners from across the country, those who can, come. And it's a final event, three hours where it's an open conversation with questions and answers from the audience, the attendees and it gets into some really frank discussion.

And as I say, it's the end of three days, everybody knows everybody to have a chance to network. We also have speakers, we have ... I'm not sure how but, from day one, we have hit on topics that are leading edge. The very first conference we did was about wearables and artificial intelligence in wearables, Fitbits. And I remember talking to someone from Fitbit who assured me that, no, no, no, all the information that a Fitbit collects, it's just personal, it's with you, nobody ever gets access to it. How did that work out over the years, yeah? So, we have managed to be on the leading edge and we will continue to do that and it is always from a practical perspective not a recitation of what's the latest legislation that was passed. The impact of it, sure. It's not a recitation of the latest case law, people know how to look that up for themselves. It is how do you do this? How do I do a fulsome real complicated privacy impact assessment? What is a transfer impact assessment? What am I going to need it? It's from a practical perspective.

So, that's what we're doing. Details about the conference and early bird rates will be announced very shortly. If anyone's interested, whether in speaking or sponsoring or attending, information is on the website, contact us.

Ron Kruzeniski:

So, you've outlined what interested you in '23 and things you're thinking about and PACC is going to be doing in '24. So, people listening, if they say, "Hey, I want to be a member," how would they go about becoming a member?

Sharon Polsky:

We've tried to simplify it. You go to the PACC website at pacc-ccap.ca and click on get involved. Because, really, it is a matter of getting involved, not just being a member, sitting on the side lines consuming information. And that, certainly, there's a lot of members who do that but it's your opportunity to benefit from the membership, the features, the reduced rates, the learning events, all of it. It's an opportunity, most of all, to get involved and help shape the profession and the laws that will affect, not only the profession, but your life as well.

Ron Kruzeniski:

Okay. Well, certainly encourage people to check out the website and we can put up the link to that website in our podcast notes, that would be great. So, Sharon, I want to thank you for taking the time on

this chilly morning in Western Canada and talking with me today and I hope PACC has a very successful year. Thanks for talking to me.

Sharon Polsky:

Thank you, sir, and I look forward to seeing you at the regulators roundtable.