

Transcript Episode 17 Marie-France Pelletier

Ron Kruzeniski:

Today, I have the pleasure of interviewing Marie-France Pelletier. She is the Ombud for New Brunswick, with ombud's responsibilities and also responsibilities for access and privacy.

Welcome, Marie-France, and thank you for doing this podcast today.

Marie-France Pelletier:

Well, thank you so much, Ron, for inviting me. It's my pleasure.

Ron Kruzeniski:

The first thing I noticed that you have over 30 years of public service in a variety of positions, and I thought I would start by saying, tell us about some of the more interesting things that you have done in your career.

Marie-France Pelletier:

Thanks so much. In many ways, when I took this job of Ombud for New Brunswick, I felt it was a great opportunity for me to bring together all of my career experience so far. So, for me, it was kind of an ideal position in many ways, because as you've mentioned, I've spent over 30 years in various roles in the public sector, and I've had the opportunity to really work on some interesting files. I'm very grateful for that, to have had that opportunity throughout my career. So, I've spent the last 15 years or so before coming over in the ombud role working in or for administrative tribunals. So, that has been a really invaluable resource for me as I took on the ombud role, and I had the privilege of working for some of the largest administrative tribunals in the country, certainly at the parole board and in Ontario for the landlord and tenant board.

And I also had the opportunity of setting up a brand new agency in the federal government that provided support services for administrative tribunals. And it's in that role that I also had to interact a lot as the administrative head of an organization, with issues of right to information and privacy. Because as a service provider to tribunals, there was that intersection between what was an administrative record and what was a tribunal record, and the interaction as well of the open court principle and how this got all managed on a day-to-day basis in the organization. So, a lot of that was very interesting to work on at the time.

And of course, when I was a Deputy Minister of Policy and Priorities and other roles that I had held in a provincial government, I really got to work on some fascinating files, including education and health governance and a review of the Official Languages Act, the first one that had been conducted in over 30 years. So, these were all files that I really appreciated the opportunity to work on, and that I think have contributed to my viewpoint on many of the roles that I hold today.

Ron Kruzeniski:

Well, and I'm hoping we through our discussion can get some of those viewpoints into this conversation.

Now, as we work with our colleagues across the country, I think we categorize people in the access privacy area as sort of new Commissioners or old Commissioners. And I had you kind of pegged as well, "Marie-France is new to this position." But then in preparing for this, I looked at your bio and you were appointed January 1, 2022-

Marie-France Pelletier:

That's right.

Ron Kruzeniski:

... and my first reaction is, "Where's the time gone? And she is not a new Commissioner and not a new Ombuds person anymore." What do you feel you've been able to achieve in that almost a year and a half in the job, both in the ombuds area and the access and privacy area?

Marie-France Pelletier:

Yeah, so that's my reaction too, is time has flown since January. It's funny because in some ways I feel like I've been around forever and yet in reality it's been 18 months, but it's been a very busy time. I guess, that explains why time has flown by.

When I arrived, I arrived into an office that was still feeling the effects of the pandemic. There were still lockdowns when I first arrived in the province. And navigating through that and bringing the office out of that pandemic mode into what life is now for us in the post-pandemic world. I suppose this is probably true of many offices, I think the pandemic did have an impact on the functioning of the office, obviously, but not just because of the pandemic, but there had been a backlog of cases that had been accumulating, especially on the information and privacy side of things in our office. And so, that's been certainly something that we tackled head on to make sure that we were getting caught up on those types of files and giving responses to the people who made the effort to make a complaint to our office and deserved an answer to their questions, and also give guidance to public bodies whether or not they were doing things properly or not.

And so, that was a big focus of our information privacy team, and I'm happy to report that at the end of March of this year, we had cleared up all of the backlog to the end of December 2021, and right now we're on track to clear up the backlog from, well, I don't know if it's a backlog at this point or a case inventory, but in any event, all the files from 2022, I think we'll be on track to be able to have most of those resolved by the end of June.

So, I'm very thankful to the team because I mean, they do the heavy lifting, as you know, they're the ones that are working very hard on these files to try to get them resolved and to counsel me when an informal resolution isn't possible. So, I'm very proud of the work that's been accomplished by the team on that front, for sure.

Ron Kruzeniski:

So, you have a challenge that some of us don't have. Some of our colleagues are Commissioners for access and privacy, but others have dual roles or cripple roles of being Ombuds person, Privacy Commissioner, sometimes Conflict of Interest or Public Interest Disclosure Commissioners. And I thought, and as we prepared for this podcast, I thought it's an intriguing discussion to talk to you about your thoughts being appointed to a multifunctional role. What's your thoughts and feelings about that multifunctional challenge?

Marie-France Pelletier:

For me, in some ways it feels natural because as I had mentioned earlier, I was used to working in organizations that were serving multiple tribunals. And so, as the administrator of that support service organization, I had to develop a skill set to be able to not become an expert in all of those various

matters of the 11 tribunals that I served, but being able to understand their needs and make sure that I was supporting them in their mandate.

So, now the role is a little bit reversed, in that I'm the decision-maker, if you will, and I'm the one that has the responsibility to deliver on multiple mandates. But because of that experience that I've had, it's not completely foreign to me to be able to really understand the expertise within each one of these roles, make sure that I've got staff that are also specialized in these roles, but then leveraging those opportunities that do come from co-location of these mandates, if you will, because they're... At its core, the work that we do under each of these mandates, because the ones that I have, as you mentioned, are the more traditional ombud administrative fairness types of investigations. I also have the information and privacy investigations and the whistleblower investigations as well, among others. There's other smaller parts of the mandate, but those are the main components.

Even though the subject matter is quite different between all three of those mandates, at their core, the role is similar, because we all do intake, we all do early informal resolution as much as possible, we sometimes do investigations both own motion or as a result of complaints, and we issue reports at times and we do promotion of the mandates that we have through public education and other means. So, those core functions are similar. It's just the subject matter that's different.

So, the opportunity that this affords us is that we're able to pull some resources to help support each other in those mandates. So, if there's a workload surge in one area, I have some lawyers who work in information and privacy that can lend, when they have time, some of their expertise to the other parts of the office. So, I don't necessarily have to go outside and hire different people to do that or consultants or that kind of thing, although sometimes that is useful too.

So, in terms of training opportunities, I find this is a very useful model to have because it gives employees as well of our offices colleagues with which they can discuss, because in small jurisdictions like mine, even with all of those mandates, we're still a small team. But by being able to provide those opportunities to employees, to have colleagues to discuss and vet issues through different lenses, that's often very useful.

At the end of the day, I don't think there's a right or wrong model of how these jobs get done. As long as you've got the resources and the capacity to fulfil your mandates, I think that's the key.

Ron Kruzeniski:

I think most of us have a term when we're appointed to a fixed date, and mine is some 13 months away. I'm not sure if you have a fixed term. I just almost assumed that you did. What would you like to achieve across the various functions, ombud's work and access and privacy work, for the duration of your term?

Marie-France Pelletier:

So, I do have a fixed term of seven years, non-renewable in our case. I know in some provinces, I think the terms are renewable.

Ron Kruzeniski:

Yes.

Marie-France Pelletier:

But in ours, it is not, and I actually agree with that to some extent. I think a seven-year term gives you a broad enough amount of time to be able to accomplish a number of things. And so, for me, there's a couple of aspects that I definitely want to focus on while I'm here.

One is modernizing our operations as an office, so that we can offer better services and better response times to the complainants that come to us. I think that's very important, being able to be as responsive as possible as quickly as possible, while still obviously being thorough in the work that we do, but trying to assist people as much as we can I think is very important.

The other aspect that I really want us to work on as an office is, I was talking about that promotion and public education role. I think raising awareness for the existence of our office and the services that we can bring and then providing some of our expertise proactively, like through training sessions, guidance documents, all of those types of things, I think is critically important. And I think for our office, for a number of very valid reasons, I think that had taken a backseat for a few years, mostly because of the chronic underfunding that our office had suffered from, which I'm happy to report has been corrected in this last budget. So, we're on the right track to get that sorted out.

Ron Kruzeniski:

So, are you hiring more staff?

Marie-France Pelletier:

Yes, we're hiring more staff, and that's going to allow us to really explore those parts of our mandate that we had to set aside so that we could focus on responding to complaints, which was the right choice to make obviously at the time, but now I'm happy that we'll be able to expand our reach a little bit more. And so, that was very important to me, so that as an office really fulfil our role to the fullest extent possible. I mean, we're still a small office and we can't hope to have all of the resources that larger jurisdictions have, and all of that, but I'm happy that we'll have a better chance of stepping up to fill in some of the gaps that had occurred in the last few years.

Ron Kruzeniski:

And you've got a seven-year term, so you've got about five and a half years left to achieve all that.

Marie-France Pelletier:

Yeah, exactly.

Ron Kruzeniski:

And looking at your bio, I was intrigued by the opportunities, and you referred to it earlier, being administrator, and I wrote out the names right here, of the tribunal service. And based on that experience with other tribunals and a service assisting 11 different tribunals, what thoughts or advice do you have for people in the ombuds function or the access and privacy function that we can make things better for those that come to us asking for our assistance?

Marie-France Pelletier:

So, for me, both as an adjudicator and as a tribunal administrator, what I really strove for was better access to justice. I mean, I didn't always succeed probably, but that certainly was my objective. And making sure that we remember within the tribunal that as a tribunal you have a number of legal obligations that you have to fulfil through your adjudicative process and then eventually through your decisions. But at the centre of that, you have to remember to try to focus your services on the clients that are coming before you, both parties.

And so, having this client centred approach for me means, I always think about, not necessarily the parties who can afford to be represented and have sophisticated professionals that can work for them, but thinking about those individuals that come before us that may not have that opportunity to be represented by legal counsel or things of that nature and what that experience must be for them, and trying to make that experience the least intimidating, the most helpful, while still maintaining your impartiality and all of that. I think it is possible to both do active adjudication while still maintaining that responsibility for impartiality and fairness.

And so, sometimes that's easier said than done because your go-to is, "What do I need in my role?" And the parties need to respond to that need because I have to respond to that need, otherwise I'm going to go be overturned on appeal and whatnot. But even within that responsibility is trying to, always trying to put yourself in the shoes of the people who are before you and trying to make sure that you're being as accessible as possible.

Now, there are some jurisdictions that have done that beautifully and have had the opportunity and the resources, quite frankly, to really look at their processes and conduct focus groups of users and that kind of thing. That's not always possible to do. But I think the most positive first step is really trying to think through, "How do the people who are appearing before me, how are they being supported through this process?" And adjusting your processes accordingly. So, I think that would be my go-to, because administrative tribunals were created as a means to be more accessible than having to go to the courts. And so, as a lawyer myself, I can say this, but there's a lot of lawyers involved in administrative tribunals, and sometimes we try to recreate what we know, which is the court process that's adversarial. But we have to remember as admin tribunals, we have other tools at our disposal and it's important for us to be able to use those.

Ron Kruzeniski:

So, since you are now a veteran, but you still have five and a half years left, what challenges do you see to an ombud's office or access and privacy office that are going to face us in the next five years?

Marie-France Pelletier:

I think there's a few. I think we do have a role in maintaining the public trust. And we know, as a society, that's been challenged a fair bit in the last few years, if not decade. So, I think our role in being able to maintain the public trust in the public institutions that serve them, I think is critical. So, I think that's both a challenge and an opportunity for our offices.

And what I mean by that, more specifically in my case, for instance, is making sure that as an office, I'm not getting drawn into the political debates of the day, but that I reinforce this role that our office can play in being sort of the voice of reason between opposing forces on any given issue. It does happen that our office gets contacted when there's the political matter of the day and wanting us to wade into it and using us to either say government is wrong or government is right. And I'm not in the business of deciding that, or at least I don't think I am.

What I am in the business of is making sure that rights are respected, even on the ombud side of my mandate, making sure that people are being treated fairly by their public institutions, and being the arbiter of that in many ways. And then, on the information and privacy side of my mandate, making sure that people's privacy and access rights are protected, and being the arbiter of those issues in a fair and impartial way. So, I think that's the way that our offices contribute to that issue of public trust that's being eroded in society at the moment.

Ron Kruzeniski:

And my next question kind of goes a bit broader, and you touched upon it when you talked about public trust. What challenges do you see to our democratic system that if we're not directly involved, if we're sort of on the edge of it, sort of ensuring people's rights are preserved, whether it comes to access or privacy or trust in the system, what do you see there for challenges these days?

Marie-France Pelletier:

I think society is evolving so rapidly, especially for information and privacy issues. I think one of the challenges that I see is how can we make sure that the legislative framework within which we operate can actually be malleable enough to evolve or to take into account some of these very important changes that are happening in society. And I'm thinking specifically about technological advancements, and what that means, and this whole debate on what constitutes a record these days in a digital world with metadata and AI and those types of things.

And to be perfectly honest, I'm not sure if our legislative framework is malleable enough now for us to deal with it or not. I think that's where we need to get creative as Commissioners, in either identifying what some of these challenges are in our legislation or getting creative about how we can use our legislation to help navigate these new areas that seem to be evolving on a daily basis in many ways. From my perspective, that's one of the important challenges that I know I'm going to be facing for the remainder of my mandate, most likely. I think perhaps my colleagues around the country are probably seeing similar things, maybe from a different perspective, but they have similar questions probably.

Ron Kruzeniski:

So, in posing that question, I was curious whether you would sort of get through the answer without mentioning AI, but you did mention-

Marie-France Pelletier:

I did not.

Ron Kruzeniski:

You did mention AI, and to some extent, this is, I guess, more a Federal Commissioner issue rather than us in the provinces. But I'm wondering if you have any thoughts from the ombud's point of view or the privacy point of view on the AI? And of course, everyone's talking about, every headline I read is about ChatGPT. Any thoughts there kind of from a provincial point of view?

Marie-France Pelletier:

So, it's not an issue that I feel like I'm an expert on yet, and maybe I never will be. We'll see. We'll talk again at the end of my mandate, but-

Ron Kruzeniski:

You have five and a half years.

Marie-France Pelletier:

That's it. Yeah, exactly. But I think for me, what I'm trying to wrap my head around is not to quote or misquote sci-fi movies or that kind of thing, but I am tempted to say the resistance is futile, but I say that tongue-in-cheek a little bit. To a certain extent, I think we have to face the reality that technology is

advancing rapidly, perhaps beyond some of what our comprehension is as lay people, who don't work in this field on a regular basis. So, for me, it's not so much how can we resist this evolution, but how can we perhaps adapt to it in a positive way, because I tend to be an optimist by nature, and there is some value and some opportunities in these technological advancements. It's not all bad. So, I don't want to get caught up too much in the negative and the worrisome aspects of it.

I want to be realistic about those, obviously, but not necessarily throw the baby out with the bathwater. So, not vilifying AI as being the death of civilization, as some would have us believe, but seeing perhaps what are some of the opportunities that this type of technology can offer and what are some of the pitfalls that we need to compensate for. So, for me, it's not an all or nothing kind of thing. So, I don't know what the answers to these questions are, and perhaps I never will, myself. But I think as a community of Information and Privacy Commissioners, I think it's important for us to put our minds to these things, and I'm happy to have that network of colleagues around the country, that we can have these discussions with and hopefully advance the public debate on this in a positive way. That's sort of my take on things at this point, and we'll see how things evolve over time.

Ron Kruzeniski:

So, one final question. Yesterday, Newfoundland released their report on the breach and in effect theft of personal health information from Eastern Health, one of their health regions. And the reason I raise this, I have become kind of focused and sort of possessed with making sure, first of all, that citizens are aware of where they're giving or putting their information. But secondly, that organizations do their utmost re: security. And the Eastern Health breach is not just a provincial breach, it's significant across Canada. I just wondered whether you had any thoughts about the province of New Brunswick or the province of Saskatchewan, that I focus on, needing to really focus on protecting the information that organizations gather?

Marie-France Pelletier:

Yeah, I think, if anything, the situation that occurred in Newfoundland is a wake-up call for everybody. I don't know all of the specifics of what happened there, but in this type of area, it's often said it's not if you're going to have a breach, it's when. And so, you have to prepare for all eventualities. And I'm not saying that to be creating doubt in public institutions and the way in which they're managing our information in general, but I think it's a wake-up call to make sure that these issues of how personal information is protected, especially sensitive personal information, like health information, is protected, I think needs to be addressed constantly. And it's certainly an area where governments can't rest on their laurels and think, "Oh, we've got a brand new fancy system, so we're good now." And I think for the most part, I would imagine that most governments understand those responsibilities, but still, there can never be too many conversations about this. There can't be enough oversight over these kinds of matters, for sure.

Ron Kruzeniski:

Well, Marie-France, thank you very much for taking the time from your three main functions, and you didn't even list all of them, to talk to us here in Saskatchewan today. And I really enjoyed this conversation and I'm glad that I had a chance to talk to a new veteran Commissioner.

Marie-France Pelletier:

That's good. I'm very happy to have had the opportunity to have this chat with you as well. And I have to mention, I know the staff in my office were very excited to know that I was chatting with you. They

listen to your podcast religiously. And so, I certainly bring their thanks into your invitation. So, I very much appreciate the conversation as well. Thank you so much.

Ron Kruzeniski:

Thank you.