

Transcript Episode 21: Jason Pedlar

Ron Kruzeniski:

Today I have the pleasure of talking to Jason Pedlar. He is the Ombudsman, the Information and Privacy Commissioner and the Public Interest Disclosure Commissioner, all for the Yukon. And it is my pleasure to talk to Jason today. Welcome, Jason.

Jason Pedlar:

It's great to be here. Thanks, Ron.

Ron Kruzeniski:

So, I want to welcome you and I noticed the three roles that you have, but obviously you had a life before taking on those three roles. Can you just tell our audience what you did prior to becoming an Ombudsman and a double Commissioner?

Jason Pedlar:

I've actually been with the office since 2018. I was originally hired as the Director of Informal Case Resolution, and then in 2021 I was promoted to a newly created position as Deputy Ombudsman and Commissioner. So my role when I was hired with the office was to lead the informal case resolution team. So our office channels nearly all of our cases into our, what we call ICR, and only those that were unable to resolve proceed to a formal investigation. So, my responsibility was to oversee and to build that program or that team.

To do that, I applied my background. My background is in dispute resolution and assistance design. So, my task at that point was to modernize our whole informal case resolution process. And as part of that was to build relationships with our stakeholders so that we weren't seen as the enemy regulator. So we heard very anecdotally, we heard very early on that our office was an unknown. It was somewhat mystical, my words, not anyone else's, but they didn't understand our role and they were always worried when we came knocking.

So I wanted to build that down a little bit and improve the relationship, especially at that informal resolution side and dispel some of the mystery to the work that we do, and to reinforce, again, basic conflict resolution principles, which is it's easier to deal with complaints regardless if it's access complaints or administrative fairness complaints, it's easier to deal with them as early as possible as opposed to the more protracted formal investigations, et cetera. So I tried to incorporate some of those principles into the work that I did.

Prior to moving to the Yukon, so I'm from Ontario and prior to moving to the Yukon, as I said, I was in the dispute resolution field for over 20 years now. I was the Ombudsman for a large Canadian insurance company. I was a mediator with a quasi-judicial tribunal of the Ontario government. I also had a consulting practice where I consulted for public and private organizations in dispute resolution or conflict management and helped organizations deal with both their internal and external complaints, so internal employee type complaints and working relationships internally and then consumer or customer complaints as well.

I was also the Director for the Centre of Conflict Resolution Studies at the University of Prince Edward Island. And I also have a passion for teaching and delivering training programs. Up until that point I was in conflict resolution or dispute resolution fields. So ironically you go into 2018 when I was hired and although I had experience in the ombud's mandate and by the extension because there's similar

mandate under the public interest disclosure mandate, I had little experience in access and privacy. It was a huge learning curve for me and one that I'm still learning to this day.

But what I was able to do was to apply my background in interpreting and applying legislation, and I did a lot of reviewing of case law and reading decisions to get up to speed. I had to say that probably most importantly is I had a great mentor, Diane McLeod, as you know, former Ombudsman and Commissioner of the Yukon, left her position last summer to become Alberta's IPC. She was the first full-time Ombudsman Commissioner. She was appointed in 2013, and frankly, she was exactly what this territory needed at that particular time from an access and privacy perspective. So having a mentor like that definitely helped with that learning curve.

Ron Kruzeniski:

Wow, that's a great background. And the mediation conflict resolution, I'd like to come back to that a little bit later in our discussion because I think there's some interesting questions there, not only to ombudsman work, but to information privacy work. So I think you were acting in all three roles till about what, last October when it became final?

Jason Pedlar:

Correct, yeah, from August to October. Yeah.

Ron Kruzeniski:

So, you're coming up to your first anniversary very soon.

Jason Pedlar:

I am, yes.

Ron Kruzeniski:

So, there's a number of Commissioners who have the multiple hats. I've talked to Marie-France Pelletier in New Brunswick for example, and it introduces the aspect of being a decision-maker or mediator in multiple areas and/or multiple ways. Do you have any thoughts about the ability of fulfilling the multifunctional role and maybe the challenges, but the benefits?

Jason Pedlar:

Absolutely. So yeah, there are two others like me in New Brunswick as you mentioned, and Manitoba also have the three mandates, the Ombudsman, Information Privacy Commissioner and Public Interest Disclosure Commissioner. Though each jurisdiction may call their titles slightly different, but they're similar mandates. In the Yukon, the Ombudsman and Information Privacy Commissioner have been the same person since its inception of the Ombudsman Act and the Access to Information and Protection of Privacy Act, which was first passed here in 1995.

And then in 2015, a third mandate was added, which is the Public Interest Disclosure Commissioner, under the Public Interest Disclosure of Wrongdoing Act. In August of 2016, the Health Information and Privacy Management Act, which we known as HIPMA, which deals with health privacy came into force. So that leaves us with three mandates and overseeing four separate acts.

So with multiple mandates comes what I see as both benefits and challenges, but overall I think that the benefits outweigh the challenges. So let me describe some of the challenges and benefits that I see anyways. One is that obviously having three mandates, four acts, that's the Ombudsman, IPC, and PIDC,

those are three different roles with unique expertise to each one. So finding candidates for that particular role can be a challenge. So it's unlikely that you'll find a candidate or employees that have worked in all three mandates.

So that leads to a training challenge or some gaps in knowledge on one of the mandates. This can be overcome by, in my case, having a knowledgeable team and investigators that can provide guidance and continue to provide me guidance. And a lot of the mandates and the acts obviously can be trained upon. So I was able to hit the ground running, and I said this in my interview when I was being hired is I think that this is a benefit. I was the first house officer here in the Yukon that was appointed from within the office itself. Another benefit is, and I think Marie-France mentioned it a little bit on your podcast, so I have investigators for all of my mandates, so that gives me more investigators than I would have if I just had a single mandate.

And I'm able to leverage because we train all investigators in all mandates and all acts. We don't have specific teams for one act over another. I'm able to deal with the peaks and valleys of one act or one area might be more complaints than others. I'm able to resource accordingly and pull or be able to leverage investigators to deal with the complaints that come in as opposed to not having as many investigators because of a single mandate. So that has been a benefit for sure.

As I alluded to though, training of those investigators is time-consuming and that is probably one of the biggest barriers to this model is it takes nearly at least a year of onboarding and training, and even at that point still requires monitoring and oversight till an investigator gets to the competency of each of the acts and the mandate. So that is a challenge, but again, it's one that can be overcome with proper training.

Ron Kruzeniski:

So, I would take a brand new investigator who wasn't exposed to any of these areas, all of a sudden coming on board, if it happened that way. I mean they would feel swamped for a number of months getting all the three different functions in the four different acts. They would wonder whether they've made a mistake, I would think.

Jason Pedlar:

Well, even if they have experience in one of the mandates that we have, they might often feel that way because of a brand new learning curve on another act. So you raise a good point because it's important that we recognize and it's important that we set realistic expectations for when someone is able to actually... you know, the progress of that investigator and being able to do the work and to realize that it does take time.

Ron Kruzeniski:

And you did say it takes about a year. I would say in our case, with only one of those functions, we generally think it will take a good nine months before the person is really up to speed. So your year is still pretty ambitious because you've got the three functions.

Jason Pedlar:

I would say my year is sort of the starting point where they're able to do more work with less supervision. I'm still learning myself. So it's a continuous learning cycle.

Ron Kruzeniski:

So, when we get appointed as Ombudsman or Commissioner, there's usually an end term. What would you like to see yourself achieve as Ombudsman, as Public Interest Disclosure, and obviously as Information and Privacy Commissioner? Have you set some goals or targets that you'd like to achieve by the end of your term?

Jason Pedlar:

Yeah, in the Yukon, the Ombudsman I can see in PIDC are appointed to five-year terms. So I have coming up to four more years in this current term. There are definitely, I have some things that I would like to accomplish. And I recognize also that some of these things that I would like to accomplish just because they're on my wish list, are not necessarily things I have full control over because some, for example, revisions to act or modernizing of acts require lawmakers to see the need. So I see my place as being able to provide some of that advice and recommendations and the reason why it's important. But ultimately some of my wish list, so to speak, is not entirely under my control. So in the ombuds world, that is one that a revision to the act I think is needed and some updates to that.

As I mentioned earlier, it has been substantially revised since 1995. So one of the things that I would like in that role is the ability to conduct own motion investigations. It's something that was an authority that was added as IPC when ATIPPA was updated and went into force in 2021. It's the power that I have now as IPC, but I don't have as Ombudsman. That is if I'm aware of a complaint or an unfairness or something that I would normally want to investigate, I hear it through the media or a word of mouth, I still require someone to walk through the door with a complaint before I can launch an investigation. I can't do that on my own motion, and it's something that is unique and no other jurisdiction in Canada has this limitation. And we actually did some research, and we can't find a jurisdiction anywhere in the world where Ombudsman can't do own motion investigation.

So that is something that I really hope that lawmakers consider under ATIPPA, which is our access and privacy legislation for public bodies, for the government departments in particular, I would like to see, and I know my predecessor commented multiple times in her annual report, if we are doing a formal investigation where we issue recommendations, the IPC in our jurisdiction have recommendation power. We don't have order making power like other jurisdictions have in Canada, some jurisdictions, not all. We are finding that our recommendations are not being accepted on a fairly regular basis, which is problematic where we think that the provisions of the act haven't been applied correctly or information, for example, is being withheld inappropriately. There's not that much we can do about it if a public body chooses not to listen and not accept our recommendations.

So I'm hoping that changes and that we have under our new act, we can be an intervener now, which is a new authority that we hadn't had in previous acts. And we've been able to utilize this in a judicial review. So someone who these were both access requests and the only recourse that someone has in the Yukon if public body doesn't accept our recommendations is to apply to the Supreme Court of the Yukon for judicial review. And we've taken that role as intervener, and we've had some preliminary decisions on this that I'm hoping will strengthen our recommendations. This may improve ongoing, the future consideration of whether the public bodies accept our recommendations or not.

Ron Kruzeniski:

Do you find that ministries, et cetera, don't get excited about going to court and that causes them to be a little more attentive to your recommendations?

Jason Pedlar:

Well, it doesn't happen that often, the going to court piece, I mean. In our act, the onus is on the applicant to apply to the court for a review as opposed to the other way around. So there's a barrier to access because it requires someone that can afford to take the matter to court. So coincidentally, we've had two independent reviews all around the same time, two different applicants who have taken these to court. So it's a fairly novel action right now, the court to do a judicial review. And that's why we thought it was really important that we clarified as intervener exactly what we think the review should be about.

Ron Kruzeniski:

Right.

Jason Pedlar:

Administratively, I've been working hard over the last year to clear up, we've had some backlogs in case files, especially under our old act, under ATIPPA. So we've been working hard to clear up that backlog. And we also had a backlog of privacy impact assessments. So we're really working hard on streamlining our processes there. Our report, I'm a big fan and proponent of simple plain language. I'm reducing the size of our reports. So if we don't have to say something, we don't say it. And my intention is that all of our reports under all of our acts, they are more digestible and more understood in terms of the rationale and what our conclusions are.

My last on my bucket list is outreach. I think it's important that for all of our mandates that we could do a better job and we can reach all of the different corners of the Yukon and all the communities in the Yukon and ensure that the word is out about the type of work that we do in our mandates. And as part of that is to build guidance materials and training materials to educate the public and the public service of our mandate and our roles and to help them achieve their obligations.

Ron Kruzeniski:

Well, that's kind of an impressive list, and I understand your point about not everything being under your control, for example legislative change, and basically all we can do is sort of suggest, encourage and recommend and hope that the lawmakers see the reasonableness of what we're asking for. Now, you sort of covered a couple of these, but what challenges do you see either locally or nationally or even internationally to your ombudsman work, your privacy work or your public disclosure work? What challenges do you see impacting your ability to achieve that bucket list?

Jason Pedlar:

That's a great question. I think that every jurisdiction probably has their own challenges and have their own list that is unique to them. One, I alluded to it with the Ombudsman Act in particular, outdated acts. Several of our acts have mandatory statutory provisions in it so that they're reviewed every four or five years. The Ombudsman Act, I said, hasn't been changed since its inception. I think that is important in that acts are fairly consistent and that the best practices and principles are used to guide the development and the modernization of acts. So not letting an act get outdated. And I know that in the access and privacy world, the privacy side in particular, this is a common topic about keeping up with technology and our acts and our regulations are often very far behind with the actual landscape of technology. So, it's important that there's a vested interest and a recognition by lawmakers that laws need to be constantly updated or reviewed and modernized to reflect the changing times.

So I think that that's important. Also, some clarity. Several of our acts, there's been some ambiguity in the wording or whether we have jurisdiction over particular entities. I think there's a lot of, for conflict resolution 101 is try to avoid the conflicts in the first place. If you put the extra effort in making things really clear and unambiguous, that goes a long way. And I know that we've suffered from that and have had to go to court to get clarity on things like jurisdiction. So, I think that these are sort of best practices that I would hope that lawmakers across Canada and the world consider. I spent a little time talking about the acceptance of recommendations.

I'm going to work really hard as I did when I was the director and deputy of trying to get that buy-in of why our opinion matters and why we're the subject matter experts. We can provide that guidance and the rationale to resolve complaints and to get acceptance of our recommendations. I'm going to work hard with that same approach, but more at a broader level across our jurisdiction. I think that relationships are important. I mentioned in the need for awareness, people can't knock on our door and can't access our services if they're not aware of what we do, more broadly even what their rights may be. I think that's really an important thing and I think that that is a challenge that I hear a lot of my colleagues, either Ombudsman or Commissioners, struggle with sometimes. It's just getting out that message of that we're available when you run into a challenge that fits within one of our mandates.

Maybe finally, one of the things that can be concerning is to ensure that there's adequate funding and resources provided to our offices. We have broad mandates, sometimes more mandates than other offices, and I think it's really important that they're sufficiently staffed and funded to be able to do the work that we do. I don't like taking years or even months depending on what it is to deal with the file. If a privacy impact assessment comes in, I would like to be able to turn that around within a couple of months as opposed to longer than that. So that is actually of value to the public body. So I think the funding and adequate resources is probably something that we need to keep our eye on and ensure that our offices are properly funded and resourced.

Ron Kruzeniski:

Well, Jason, you certainly have put your finger on the challenges, and I think the challenges you outline are the challenges for all of the Information and Privacy Commissioners across Canada. In that you talked about conflict resolution and your background certainly is in conflict resolution, mediation, all those areas. I am a great believer in mediation, but I have found that in the nine years I've been in the office, it hasn't been as successful as I would've liked. And it sort of comes partly the applicant doesn't trust the public body, and the public body digs their heels in because this applicant has been difficult, and by the time they get to us, they're kind of really locked in.

And I think our early resolution of files hovers somewhere around 25% and I'd like it to be much higher. And I'm just curious about your thoughts of your successes with conflict resolution and early resolution, getting, in a sense, the public body and the applicant an answer or maybe a resolution early rather than waiting six months or eight months or longer to get an answer. Any guidance for me there?

Jason Pedlar:

Sure. Not to compare, Ron, but our resolution rate hovers around 90% at ICR, and that is across all of our mandates. I don't think that we're necessarily comparing apples to apples. Every jurisdiction is different and the length and time and everything. So I don't think you can directly compare that. But what I did early on when I was originally hired, that stakeholder engagement piece was really important. That allowed for a few things. We opened the door for, first of all, we talked about the elephant in the room is that yes, we are the regulator, but there's also the opportunity where we are a trusted resource,

we can add value to the public body. So it's always as mediators, you're trying to look at interests and you're also trying to say what's in it for them. You want them to get the buy-in as well.

Well, what was in it for them is that we can help you resolve. If you're not sure, you can come to our office and we can help guide you to the resources that you need to make an informed decision, if we're talking about an access request, for example. And we can be a resource and that we are the subject matter expert, so this is what our view is in ICR, we don't make any findings. We just simply say, "This is our perspective, this is the... Who's right or who's wrong, we don't use those terms." If it goes onto a formal investigation, which is a little bit of the stick, the Commissioner will likely, based on the same type of case law and analysis, will likely view the case similarly. So why not try to resolve it now and reach some kind of resolution of releasing certain records that we think are appropriate and going from there?

So there's not necessarily magic to it, it's just that has gone a long way. We met with ATIP coordinators and we had a round table, we produced some guidance documents, and of course I have staff and investigators who are able to explain what the issues are and their perspectives and the reasons why they view a certain way, and can tell all the parties their thoughts on a particular complaint so that they're informed and can make an informed decision. And from a public body's perspective, most public bodies, in my experience anyways, they don't want to go through the laborious informal investigation process under our act, under the ATIPPA Act anyways, and HIPMA for that matter, there's no discretion that I have. If we're not able to resolve it informally, it needs to go to the formal investigation process. Those are some of the efforts that we have done over the last five years or so to try to improve our resolution rate and to get that buy-in.

Ron Kruzeniski:

Congratulations on that success rate, in what you say. You are challenging me to think about this more. I have run out of questions, Jason. This has been just a great discussion, and thanks for taking the time from all three functions and having this discussion with us today, and I'm looking forward to seeing you at the next federal provincial meeting.

Jason Pedlar:

I look forward to it too, Ron. Thank you for the opportunity, this has been great.