

Transcript Episode 4 Caroline Maynard

Ron Kruzeniski:

Today I have the pleasure of talking with Caroline Maynard. Caroline is the Information Commissioner for Canada. She was appointed in March of 2018. Now two years into her seven-year term, she and her team were faced with the unprecedented challenges resulting from the pandemic. So I know that our discussion is going to be interesting in that respect. Caroline early on quickly pointed out to leaders that the right to access had not been suspended because of the pandemic. And I think we've all kind of had to make that point. And early on she sounded the alarm for the need for federal institutions to ensure good information management practices and record-keeping practices even though we had a pandemic occurring. Currently, there is a review of her access legislation underway at the federal level. And I am really interested keeping in mind that we still are faced with the pandemic, I'm really interested in hearing her thoughts about the state of access to information as we sort of start 2022. So welcome, Caroline, to this podcast.

Caroline Maynard:

Thank you, Ron. Thank you so much for having me and inviting me. I'm excited as well.

Ron Kruzeniski:

So, I know some of this information is on your website, but you've been appointed for Commissioner of just about four years now. What kind of exciting things did you do before you became Commissioner?

Caroline Maynard:

Not so exciting. As you are, I'm a lawyer by trade. And I don't know if a lot of people know, but in Quebec you don't need to have a degree to get into law school. So I ended up being a lawyer extremely young. I was 24 years old when I started practicing law, so very green on all bases. So, I started, I did the one year of private practice in here in Gatineau. And then I was lucky to be hired within the government with the Canadian Revenue Agency back in 1994. Since then, I moved up to different legal counsel positions. One of interesting positions that I hold was I was the only civilian legal counsel within the office of the Judge Advocate General at the Department of National Defense, working in their grievance process internally. And then I moved to the Military Grievances External Review Committee as a senior counsel. And then from there I became director of legal Service.

And at the end of my 11 years at MGERC, we call it, I became the interim chairperson and Chief Executive Officer for that organization until March 2018, when I became aware of the position of the Information Commissioner being opened. And that's when I decided it was time for me to have a change in career and I applied and there I am.

Ron Kruzeniski:

Well, and we're glad that you are here. And I've certainly enjoyed working with you over the last four years. And so in June of 2019, the federal government passed some amendments to the Access Act. And it was really the most significant changes that had been made, but that would've been about a year after you started. How much influence or involvement did you have in that process, in that year leading up to those amendments and of course after the amendments were made?

Caroline Maynard:

Well, that's a good question. So actually to give some context to our listeners, some people may not know but in 2018 when the government proposed amendments, the Act was actually 35 years old. And had not been amended at all almost since then. So as you said, it was just before I got appointed and unfortunately when the Bill C-58 at the time when the amendments were tabled, neither my predecessor or me had been involved or consulted with respect to the amendments that were proposed. So we were a little surprised and unfortunately once it's tabled, it's really difficult as you know, Ron, to get anything changed. So that being said, I was happy during my first year I was asked to appear before Parliament to talk about the issues that we saw within the bill. So we kept it pretty short the list because at that point you can't ask for a perfect bill, everything is already in progress.

So we focused on three or four priorities that my office thought that needed to be addressed, mainly process issue, the transitory provisions that were problematic for my office. We also really wanted to work on a new disposition that was going to allow me to consult with my colleague, Mr. Therrien, who is the Privacy Commissioner at the federal level. So on cases where in my investigation I would see personal information and if I was inclined to order the disclosure of that information, I now have to consult with Mr. Therrien. So this is new process that was put in place with these amendments and actually is working really well. Anybody who's curious about this, we just published a report on Tuesday in a case involving medals of veterans. And Mr. Therrien was consulted in that case and luckily we both agreed. So I was able to recommend disclosure in that case.

There was other amendments that were significant. For example, finally after 35 years of having the authority to recommend disclosure in some actions within the institutions, I was giving the power to make orders. So I can now order institutions to disclose specific information, which is brand new. But the only thing is any amendments is only applicable to new complaints. Anything that I receive at my office prior to 2019 was still subjected to the provisions from the previous acts. So I cannot make orders to cases that I received before 2019, so I can only make recommendations. Another authority that was new with these new changes was the right to publish the reports. So for 35 years my office was not to publish any decisions or any reports that we were issuing, which was very difficult because you have all this precedent and you want the institutions to see that you're being consistent and your position is well explained in these reports.

And now that we can publish this report, we see the benefit of that because we can tell institutions to go see our published reports. We can also talk to the complainants when they have similar complaints. And it really helps us solve cases quicker. So I can't wait to have more and more of those reports published. So those were kind of the amendments that we worked on, and we were happy as well that the new bill, the new Act was providing a requirement for the one-year review of the Act. And then after that, every five years the Act has to be reviewed by this government, which means that we're not going to have to wait another 35 years for amendments or if anything needs to be amended. So I'm really happy that just last summer our government started a new review and at this point we are being consulted. I was able to make submissions, and hopefully this review will lead to more significant changes that have been looked after from us and from stakeholders as well.

Ron Kruzeniski:

I was going to ask you about that review but before I do, the report you released on Tuesday, if anyone's interested, I presume they can find that on your website?

Caroline Maynard:

Yes, we have a decision database right on our first page, so you can click on that and all the reports that we publish are available there.

Ron Kruzeniski:

So, you mentioned the review that's going on. So as soon as you got the first set of amendments, all of a sudden you're into a review as you mentioned, which started in 2020. What stage is that review at currently? Do you have any sense as to when a report might be coming out or amendments might occur?

Caroline Maynard:

So, the government announced the review of the entire access to information system in 2020, which was really interesting because they didn't only focus on the legislative review. But really what they were asking people is also to provide recommendations as how to improve the entire system as a whole. So that was really good. So we submitted recommendations a year ago. In my submission I separated the report in two parts. The first part I'm dealing with the main issues that we see within the system, and the second part I made some recommendation with respect to amendments that legislation should cover. I've been told that we were promised by Mr. Duclos, the former president of Treasury Board, that we would receive a report. They would be tabling a report with their recommendation as to their review in next January or February 2022. But just recently, we seem to see that the consultations have not been completed. I saw the new president of Treasury Board, Mona Fortier, Minister Fortier last week, and she told me that she's expecting some delays, which is very unfortunate because it's been almost two years now.

I understand the pandemic didn't help, I'm sure. But there's a lot of those consultations that were done online. So I'm really anxious to see this report and I'm hoping that it's not going to take more time than expected.

Ron Kruzeniski:

So, you really wanted a Christmas present by this December, right?

Caroline Maynard:

Well, I already knew it was not going to be happening by December because they told us it was going to be February. But yes, no, I think that there's been so much consultations done already. And at the same time, what we've been saying to the government is don't wait for a legislative review to do something about the issues that we're seeing. So the pandemic has just made it even worse. The delays that were there before, the backlog in requests, this pandemic has not helped. And what we've been telling the government is you can take actions now to make this go away faster than you don't have to wait for legislative changes.

Ron Kruzeniski:

So, you touched on the pandemic, and I wanted to touch on that too. This review really the backdrop to it is the pandemic. Did the pandemic shape in any way the recommendations that you made to the review group?

Caroline Maynard:

Well, it did, and it didn't. Like I said, the issues that we were seeing in terms of the systemic issues just got worse because of the pandemic, but they were already there and everybody knew them. We were lacking resources. We're still at the federal level, very paper-based government. So once the pandemic hit, the institutions were struggling with respect to responding to access requests when the documents were stuck in their office and we were all working remotely. So that really brought in a sense, the positive thing about this was it brought up how quickly things had to be changed and how innovation had to be put in place so that ATIP units were able to work from home and still respond to access requests. But the problem is there's also issues with respect to leadership, and I think there's a culture of secrecy. And I don't know if you see this in your province, but I've seen that often we're told that the government is encouraging openness and transparency.

But when you get to the actual working level, the first thing that people do when they get access requests is they're asking themselves, what can I redact out of this document instead of what can I publish out of this document? There's a tendency to be worried about releasing information rather than disclosing information. So there's definitely a shift in culture that needs to happen. And I really think that the message has to come from the leadership way at the top. And there is also a need to, you mentioned it earlier, properly document decisions. This is something that worried me when the pandemic hit because people are now working from home. There's a lot of video conferencing, there's a lot of emailing. And so I want to make sure that people don't forget that when important decisions are being made, they have to properly document and save them. These Canadians are asking more and more information. They know they have a right to information, and this is not the time to hide that information. The more information Canadians will get, I think that's going to increase the trust they have in their government.

And if you don't provide them the information, they're going to move to information outside that leads to misinformation. So there's definitely an opportunity here to do more. One last thing that I was very pushing this last two years during the pandemic is I've been telling the ministers that I've met, do not wait for an access request, give information voluntarily. Often we hear about proactive disclosure and proactive disclosure is often legislated. I want to go further than that. I want people to look at the type of access requests they're receiving and see if they can identify subject matters that are always being the subject of access requests. And instead of waiting for the next access request, just provide that information on your website. I really think that the more proactive disclosure, voluntary disclosure that we see, the backlog of requests will diminish because people will have the information and won't need to do an access request. So this is the kind of things that I believe could have happened, and I'm still waiting for some of those actions to be put in place by our government.

Ron Kruzeniski:

So, it's sometime since you made your recommendations for changes to Treasury Board, have you picked up or they indicated whether they're prepared to make any of those changes or are they holding back until they issue their final report?

Caroline Maynard:

Yeah, I haven't heard anything. I think at this point, no analysis so far, no sense of where the government is going and moving. So I'm hoping that this is something we'll see in the next couple of months.

Ron Kruzeniski:

Excellent. Well, I'm sorry you're not going to get a Christmas present. But should be nice in a couple of months. I wanted to talk about your volumes and when I've heard you talk about this, I am blown away about the volumes. And I think our audience would be interested. And of course, some of that is normal because you're a national organization and some 37 million people can make access requests. But can you just for our audience kind of tell us about the volume of complaints and the inventory of complaints that you have on hand?

Caroline Maynard:

I sure do. So what we've seen, and complaints are usually increasing by the number of the requests that governments and institutions are seeing. So again, for context purposes, there's over 250 agencies and institutions at the federal level that are subjected to The Access to Information Act. These institutions are receiving over 200,000 access requests a year. One institution actually is responsible for 50% of that, and we can talk about that later. But Immigration, Refugee and Citizenship Canada IRCC receive over 100,000 requests a year. And that's something that I can discuss further later. But because of this amount of requests and the increase that we're seeing in the last six years, unfortunately resources have not followed through. And the institutions are struggling to respond to these requests. So my complaints are going up. I started this year with 4,000 cases under investigations, even though we're closed as much as complaints as well. I think we're around 3,800 cases that have been finalized this year.

I'm still at 4,300 active cases because we're getting more complaints than our ability to close them or to investigate them. So it's unfortunate because I've received additional funding, which was great last year but our institutions that we're investigating don't have the same amount of resources. So often we are limited by the number of cases that we can investigate by the capacity of the institutions we're investigating, because they are the same people responding to my investigators in an investigation are the same people responding to access requests. So which one are they going to prioritize? They're going to prioritize the requests, not my complaints. And I understand that, it's one of those catch-22, the complaints are going up. And so this is why we're starting to do more and more systemic investigations to find out the root problem. Like how is it that the access requests are going up so much? And is there any way we can provide recommendation and solutions to our federal institutions to reduce the amount of requests, and to better manage these requests or better manage their information so that they can respond quicker?

So those are the type of things that we've been now focusing on. It's not just the individual complaints, but also looking at systemic issues that can happen within institutions.

Ron Kruzeniski:

So, you've outlined some steps there. Are there other steps you've taken to mitigate, and I am particularly because I've heard you talk before, interested in the things you have done with immigration and refugee program to deal with that 50% of the access requests to the federal government. So any other steps? And if you can elaborate a little bit about what you've done with immigration and refugee?

Caroline Maynard:

Yeah, so like I said earlier, we're looking at root causes. And when we see that there's maybe an institution that's struggling, we want to see is it a resource issue, is it a lack of training? Sometimes it's not even a financial resource issue, they just can't find the proper people to work in this field. Everybody should know that working in access requests in ATIP office is not an easy job. You're dealing with requesters that want the information now, not tomorrow. We are also dealing with public servants that

are often not very happy to receive an access request on their desk because they have other things to do they feel that is more important than responding to... So we're looking at all of these issues, and so I'm trying to encourage ministers as well to look into those issues by sending them reports directly.

So when I have an investigation leads to the recommendations, now the minister's office is aware because I feel that the higher you go, the better chance that there's going to be solutions coming or money coming down or actions being taken. With respect to IRCC, that was a very specific investigation that we did because we had received over 3000 complaints against this institution and these complaints were mainly delay complaints. So basically mostly from immigration agencies who are representing clients across the world trying to get student visas or refugee status or trying to get their citizenship. And these people were filing access requests at, like I said earlier, over 100,000 a year to obtain status of their client's file or a bit more information about why their client's request had been denied. And so, when we started looking into it, we realized this information they were asking for was usually 100% of the time disclosed to them. But they had to do an access request to obtain it instead of having that information provided to them through the portal, which exists on the IRCC website.

And what we realize is if they were to give a bit more information to their clients, that would reduce tremendously the amount of access requests that IRCC would receive. I was pleased to see that the Minister of Immigration at the time responded well to my recommendation. He definitely agreed that things had to be done. The problem again, Ron, is in terms of how much money, how much time, and is this a government priority? So at this point, we were told that it's going to probably take two to three years to change the portal to provide these clients with the information that they should receive without having to file an access request. Which means that for the next two, three years, I'm probably going to continue to receive the same amount of complaints. But IRCC is just one of those example where we can see the benefit of providing information on a voluntary basis instead of having to wait for these access requests.

And I think there's a lot of other institutions, right now Health Canada is trying to provide more information about the COVID. There's a lot of requests with respect to the vaccine passports and contract, all of this, this information should be on their website. The Canadians they want to know what's happening. They want to know where their money went. They want to see, let's say how much the CERB put in place by CRA, how much did that cost to Canada? So don't wait for access requests, just provide the information on a voluntary basis. And then we will all be benefiting from that, including my office. And my office will then be able to just focus on those cases that are problematic under the Act. Not just a question of timelines and things like that.

Ron Kruzeniski:

But as you had said earlier, some of what you've just touched on involves a shift in the culture, so that its entire organization believes that it's good to get information out there as quickly as possible.

Caroline Maynard:

Yes, definitely.

Ron Kruzeniski:

A culture shift. So you have about what? Four years left in your term. And when one is appointed as a commissioner in the first six months of year, you come up with a vision. And after you would've got your vision started, the pandemic came along. And so as you sit there today, one, has your vision changed? Or number two, what's your vision for the access to information system for the rest of your term?

Caroline Maynard:

And you're so right, when I was appointed commissioner in 2018, as a lawyer my focus was very much on my legislative mandate. I was going in there thinking, my mandate is to investigate complaints and making sure that Canadians right of access is properly respected by institutions. I am a hands-on person, very operational. So I was looking at our processes, making sure that we would be as efficient as possible. I talked to institutions to get their collaboration. I talked to complainants to make sure that they understood that the more we discussed, the better we understand their need and we can focus on those requests. But the more I've done this work now and I realize it doesn't matter how great the legislation is or how good my office is, if the government and the system as a whole and the culture as a whole doesn't change, we will never see the light at the end of the tunnel.

My inventory continue to grow. So my vision has kind of shifted a bit and now I'm looking at, like I said to you earlier, what are the things that the government and institutions can do now that could help without legislative amendments being needed? The entire system. We're talking about trying to get request process in a timely manner. We were talking about decisions being properly documented, information being given voluntarily. A shift in culture for sure, investing in HR but also in technology, taking risks, making bold decisions so that Canadians are getting the information they're entitled to. At the end I think that the goal is to have access requests being the last resort to obtain the information. You should be able to go on the website and find the information you're looking for. And if you can't, then you can ask for it through an access request.

And then my office can help you obtain that information. But if we continue to not provide this information as clearly and voluntary as possible, we're going to continue to see issues and increases in backlogs across the government. So yes, I think I was maybe a little naive when I started. Like anybody else, you think that if you work at it and you're putting efficient processes in place, things will move along. But we are in a world that information is increasing. I've seen cases where somebody asks for two lines, but because it's within the 500 page long chain of email, we have to process the 500 pages of emails to give this person the two lines that they want. So we need to better manage our information. There's all of these things that I think everybody, public servant, ministers, leaders, directors, myself can do better. And ultimately it would be a better access request system for sure.

Ron Kruzeniski:

Well, as I talk to you, I'm feeling guilty with those 4,300 files. If you weren't talking to me, you probably could have processed 10 of them well, during the time we were talking. But I thank you very much, Caroline, for taking the time to talk to me about your legislative reviews, cultural change and your vision and hope for the future. Thanks very much for doing this.

Caroline Maynard:

Well, thank you so much for having me. And I wish everybody a great 2022, an open and transparency 2022. Hopefully COVID will give us some time to breathe. It doesn't seem to be the case at this point with all the variants that we hear about. But yeah, stay healthy, safe. And thank you, Ron, for having me on your show.

Ron Kruzeniski:

I like that. Open and transparent 2022.

Caroline Maynard:

Cheers.