

Transcript for Episode 24: Graham Steele

Ron Kruzeniski:

It's my pleasure today to be talking to Graham Steele, who is the Information and Privacy Commissioner in Nunavut. And Graham, before we get into some really quite serious issues, I just thought I would ask you, how did you get to be involved in access and privacy issues? And then of course, how did you end up being the Commissioner in Nunavut?

Graham Steele:

Hi Ron. It's great to be here on the podcast with you. Thanks for the invitation. I'm a lawyer by training and I was always interested primarily in what lawyers call administrative law or the law of government. And one of my early jobs after law school was inside a public entity and it happened to be the exact same time that Nova Scotia's modern access and privacy law came into force in 1993. And so, in my organization, I was the one who was tapped to say, "Okay, now you are our access coordinator." I was the lawyer, and so it just made sense because sometimes people don't really know where the access and privacy job should sit.

Ron Kruzeniski:

Yeah.

Graham Steele:

And anyway, in my organization they said, "Okay, Steele, it's you." And so that was my start dealing with, and of course I found the whole thing quite fascinating. Then later after I left that organization, I became a frequent requester, the first request I ever filed was for a master's degree that I was working on, and I needed some background information. Then I took a long sidestep into politics, so became a very frequent requester and eventually I became a cabinet minister, which meant that I was ultimately responsible for the way my department was responding to requests. And meanwhile along the way, yeah, I've been to court several times as a lawyer on access cases, and so with all this experience as a coordinator, as a requester, as a courtroom lawyer, and then as a cabinet minister, I feel like I've seen the system from just about every side. So I feel that I can understand where everybody in the system is coming from.

Ron Kruzeniski:

There was only one more step, become a commissioner.

Graham Steele:

Yeah, I guess if you put it that way. After I left politics, I started teaching at Dalhousie for a while, but then this opportunity came up where I'd really wanted to step away from the advocacy side or the adversarial side, but it's very difficult to do that in a province where you've been an active politician. And so I was reading The Globe and Mail one day, saw the ad for the Nunavut job, and the rest is history. And so in January 2021, I became Nunavut's first resident Information and Privacy Commissioner.

Ron Kruzeniski:

So, when you became the first resident Privacy Commissioner, you had I think about six priorities that you wanted to pursue, and what were those?

Graham Steele:

In my first annual report, I did list six priorities because of the way the calendar fell, it was only a few months after I started, so this was kind of my way of staking the ground of what I wanted to see happen over the five years that I was Commissioner. The first one obviously was just running a high functioning office that makes good decisions quickly. Second, was I felt the Commissioner should have order making powers. Nunavut is one of the jurisdictions where the Commissioner makes recommendations only. Third, I said the whole act needed to be reviewed because when I arrived, the legislation was 25 years old and it was out of date. Health specific privacy legislation, Nunavut is one of only two Canadian jurisdictions that does not have privacy legislation specific to the health sector.

I said the capacity of the office needed to be gradually increased in anticipation of the jurisdiction of the office being expanded. And finally, I said that when it was time for me to leave, it would've been nice to have an Inuit or a long-term resident to take on the job. At the time, Ron, Nunavut had just graduated its second law school class and that was a program run out of the University of Saskatchewan, actually.

Ron Kruzeniski:

Oh really? Oh.

Graham Steele:

Yeah, but it was done in Iqaluit but under the umbrella of the University of Saskatchewan. And I was hoping that somebody from that class, I might be able to catch their interest and say, "Hey, there's this really interesting area of law that you should think about," hasn't worked so far, but I live in hope.

Ron Kruzeniski:

Yeah, so you don't have an eye on a particular him or her that might fill the bill? Not yet?

Graham Steele:

I'm still looking, but I think that's why I was really hopeful that it might be possible to find rather than somebody like me, Ron, coming from outside, somebody who already lives there to take on that role and then carry it for the long term. That's still my hope, but no luck so far.

Ron Kruzeniski:

So, I had the pleasure, I guess before your time of travelling to Iqaluit for a Commissioner's meeting, and that was really interesting. And I wanted to ask you what you would view as being unique, practicing access and privacy in Nunavut, and being from Nova Scotia, you'd be able to compare what's unique about doing this work in Nunavut?

Graham Steele:

The most obvious thing I think Ron, is of course that I work alone. You look at my counterparts across Canada and the office can be as many as 150 in Ontario and then sort of scaled down from there across Canada, depending on the size of the jurisdiction. In Nunavut, it is me by myself. I am the office. So I do every function that is spread out among all the staff in my counterparts across Canada. I'm the first resident Commissioner. I mentioned that because a bit of an unusual circumstance, and that is that Elaine Keenan Bengts, who was the commissioner in the Northwest Territories took on that role in the mid-1990s before Nunavut was even created. And on division of the territory into the two separate

territories, Elaine simply kept the role for both Nunavut and for the Northwest Territories, and she carried on that work with distinction for 21 years until she retired.

And so that's why say I'm the first resident Commissioner. Elaine did the work from her base in Yellowknife. I'm the first commissioner living and working in Nunavut. But the broader thing, Ron, that is really unique about Nunavut is of course that the territory is about 85% Inuit, so a far larger proportion of indigenous citizens than any other territory or province. And so learning about Inuit culture and history for me has been, without question, the most fascinating and interesting and challenging part of the job. I do feel that there is an obligation on me to be mindful of Inuit traditional knowledge and Inuit societal values and to do the best that I can to incorporate them into the decision making that I do.

Ron Kruzeniski:

That is a unique difference, and obviously a responsibility that's placed on you. Recently you issued your annual report and we all do, and it's our opportunity once a year to kind of cause politicians and citizens and those that read our reports to focus. What were your highlights this year, Graham?

Graham Steele:

Well, one highlight this year that I'm very proud of, the same highlight that I lead with every year is that my office has zero backlog. And anybody who works in the access and privacy space, I hope understands the significance of that. And that is across Canada, a lot of the offices are behind in their work, some months, a few years, but in Nunavut we're right caught up. And so I can issue a decision one to three weeks after the parties have made their final submissions, and I'm very proud of that. I've stayed ahead of the work. And so zero backlog would be the main highlight. Another one, I think Ron, is that even though Nunavut is a jurisdiction where all I can do is make recommendations, all of my recommendations in the previous fiscal year were accepted with one minor exception. Now this contrasts a little bit with some of my colleagues across Canada.

I know Yukon for example, recently has had trouble with the government rejecting a substantial number of their recommendations. I listened to the podcast you did with Tricia Ralph in Nova Scotia, and she had mentioned this as well, that the government will often reject the recommendations that she makes. But in Nunavut, the government has mostly, as I say, in the last fiscal year, one minor exception, accepted all of my recommendations. I did note again, however, that capacity is an ongoing issue in the government of Nunavut. There are far too many vacancies in access and privacy positions. Too much turnover. There's not enough training, with the result that the coordinators don't generally have a lot of experience. It doesn't help that I have authority only to make recommendations because to me, even though the government has been accepting my recommendation, it makes the whole thing a very peculiar kind of law, which is that I can look at disclosure from a government entity, a department, or other public body, and I can say, "No, you're not following the law."

And they can say, "Well, that's too bad. We're just going to keep doing what we're doing," which makes it a very, very peculiar kind of law. I just think it is time to give the commissioner order-making authority to say, "No, no, you have to follow the law." So those are the highlights of my report, Ron. The downside is the capacity issue. Too much of my work, I feel is spent just helping people within departments understand the basic basics of how access and privacy is supposed to work. And that's the function of the vacancies and turnover and the relative lack of experience.

Ron Kruzeniski:

And I don't know if it was related to your annual report, but you were invited to, I believe it was a public accounts committee, a committee of the legislature. And what were they interested in talking to you about? And did I get it right that they invited you?

Graham Steele:

Yeah, that's right, Ron. So the way it's supposed to work is that I issue my annual report and then sometime within hopefully six months of my annual report coming out, they'll invite me before the standing committee of the legislative assembly to speak to my report. So that's the theory. They hadn't actually invited me for a year and a half. And so there's quite a bit to talk about and they were interested in all the usual things: What am I working on? Why am I seeing more from this department? How's the government handling this kind of complaint? And that kind of thing. But the one thing that's worth mentioning is that I raised with them the issue of artificial intelligence, and I could tell that really caught their attention. They were listening intently. They had good questions. I raised that topic, because I thought I should at least get them thinking about it.

And of course, artificial intelligence has brought implications for all of government, but specifically on access and privacy, I am sure that there are people inside the government of Nunavut who are using artificial intelligence, these relatively new large language models that have burst on the scene and to generate reports and documents and other things inside the government. And suddenly that whole process of how things are developed inside the government is going to be much more difficult to see if artificial intelligence is being used. And so I urged on the members of the committee the need for some kind of guidelines or framework. By no means am I saying that people shouldn't use artificial intelligence. I think it could be a great tool, especially in a jurisdiction like Nunavut where the government suffers from a very high level of vacancies. This could be a way of multiplying the effort of the civil servants who were there, but there needs to be some guidelines which currently do not exist.

And then on the privacy side, I think there needs to be some attention paid to where are these large language models getting their information from? And if it's being used by civil servants without any guidelines, are these models scooping up private information from inside the government of Nunavut as part of the license conditions? I raised this with the MLAs and they seem very interested. And the last point that I made to them, Ron, which I think is worth raising with you, is that the Inuit are a relatively small population.

Ron Kruzeniski:

Right, yes.

Graham Steele:

So Nunavut is roughly 40,000 people, 85% of whom are Inuit. And so if you're using one of these large language models which scoops up an enormous amount of information from around the world, chances are that it's not going to say a lot or capture a lot about the Inuit specifically. And so if this artificial intelligence is used in the decision making process about Inuit, we need to have a lot more transparency than we do about just where the information is coming from that those models are using. And I think there's lots to think about and to explore. And when I was in front of the legislative committee, that might have been the first time that artificial intelligence as a topic was raised in the Nunavut Legislative Assembly. And I could tell that the MLAs were very interested.

Ron Kruzeniski:

Yeah, I mean you and I get faced with the headlines on AI every day, just constant articles about it. We all really do need to get our head around it. But you've kind of flagged the situation of the Inuit that the algorithms may not take them into consideration, and somehow those algorithms will have to take them into consideration at some point.

Graham Steele:

Well, that's exactly right. And to me, the important thing is that the senior management within the government of Nunavut needs to deal with this issue head on because if they don't, artificial intelligence is still going to be used by the civil servants is just the senior leadership will not have a window on what it's being used for or how it's being used. And that could create some issues down the road if it's not dealt with right away and upfront. And that's what I encourage the members of the committee to do.

Ron Kruzeniski:

Now, either the committee asked you about this or you expressed some opinions about fees, and I think you have a fee of \$25, and your comments about fees and waiver of fees I thought was interesting. Was the committee interested in fees?

Graham Steele:

Yeah, it is a question that they raised, and I have what may be an unpopular opinion among my counterparts across Canada, and that is that I think fees are a good thing. They serve a purpose, a very blunt purpose, but they do serve a purpose. Our application fee in Nunavut is, as you say, it is \$25, which I believe is tied for the highest in Canada. But I do think that it serves the purpose of causing requesters, especially frequent requesters, to stop and think and say, "Okay, is this worth \$25 to me?" And I think it has the effect of causing requesters, especially frequent requesters to spend more time crafting the request so that they're a bit narrower, so they're a bit more precise.

If you take away any application fee, there's nothing to stop somebody from just throwing in a bunch of requests that maybe haven't been well-thought-out, haven't been carefully crafted, and that is quite onerous on the government departments. But at the same time, I think it's appropriate that the fee can be waived in the right kind of case where there's an inability to pay where there's a very obvious public policy purpose and the Nunavut legislation allows for that, I think it works pretty well. So when people suggest reducing or eliminating the application fee, I'm not somebody who is on board with that. And as I say, that may be an unpopular opinion among our counterparts across the country.

Ron Kruzeniski:

No, I certainly understand that. And I think a fee provides a degree of discipline, as you've indicated. And boy, it would be helpful to applicants and public bodies if applicants spent more time crafting their access request, not going so broad that they're going to get stuff that they don't need or want. And I've been working on a blog that talks about encouraging that we all ask, "What do you need, applicant? Because maybe if we narrow it down, you'll get it a lot sooner." I digress on that one. Canada Post, they've made some changes in Iqaluit and I think you've had some concerns about that and the implications for the access and privacy world.

Graham Steele:

This is a fascinating issue that is quite unique to Iqaluit, the capital city of Nunavut. And I spent a lot of time on it over the last six months or so, and I had a major report come out on April 16th. What happened, Ron, was that on October 31st last year, Canada Post changed the mailing address of every single person in Iqaluit, all at once. Instead of the old post office box address, which we all had, everybody now was expected to use their street address. And Canada Post had perfectly good business and operational reasons for doing that, but the transition was not very smooth. And you can imagine if you changed every address in Regina or Toronto or Victoria all at once overnight, there would be pandemonium, consternation. Iqaluit is about 9,000 people, but the transition was not very smooth. A lot of mail went missing or was misdelivered, and it just seemed obvious to me that there was a privacy issue. Now, Canada Post is not within my jurisdiction, it's a Federal Crown Corporation.

I can't investigate Canada Post, but I could say to the government of Nunavut, "Were you ready for this? What are your plans?" Now that everybody's address is changing in Iqaluit, I want to emphasize that this was Iqaluit only, the address didn't change in Nunavut's 24 other communities. "But now that the address is changing, what are you going to do to make sure that mail gets to where it's supposed to go and doesn't get delivered to the wrong address or put in the wrong hands?"

And my report, as I said, came out on April 16th, found that one of the departments that I investigated had taken steps basically by handing people their mail rather than sending it through Canada Post. That was the Department of Community Services, which has in-person meetings with people receiving income assistance. So at those in-person meetings, they could hand over the mail, but I found that two other departments that I looked at, namely the Department of Finance with payroll-related mail, and the Department of Health with the health insurance card that the mail out to every citizen of Nunavut had not taken adequate steps to update their address databases.

Now, Canada Post had said, "Well, we'll forward everybody's mail for one year," so there was a bit of a grace period. And really what I'm trying to do Ron here, is to say to the government, "You've got a big privacy issue coming up on their first anniversary date, and you've got a lot of work to do between now and then to make sure that your databases have the correct address so that mail gets to where it's supposed to go and there isn't a privacy issue." So as of October 31st of this year, we'll find out just how ready the government of Nunavut really is.

Ron Kruzeniski:

What do you mean by them forwarding it for a year? They'll forward it to the mailbox?

Graham Steele:

We used to in Iqaluit have a post office box address, and after October 31st we had to use our street address. So Canada Post said, "Okay, if mail is addressed to the old post office box, we'll forward it to the civic address for a year."

Ron Kruzeniski:

Oh.

Graham Steele:

"But after a year, if it's got the wrong address on it's not getting to where it's supposed to go." I don't want to get into all the nitty-gritty details of how mail works in Iqaluit, what I will say is that if something has the wrong address on it, it doesn't necessarily just get returned to sender. So a lot of mail was

ending up in the wrong place and the wrong hands. And if that's privacy-sensitive mail, that's a problem. So anyway, that's the Canada Post issue, and I just can't imagine something like that happening in another capital city in Canada where everybody's address is changed all at the same time. It was a bit chaotic to be honest.

Ron Kruzeniski:

I can understand. So now you have some opinions on compensation for those in the access and privacy business. How did that opinion, was that at the committee too or is that a separate thing that you were talking about?

Graham Steele:

This is an issue in my annual report, and it also came up at the legislative committee when I arrived in Nunavut. I knew already that one of the problems was that the people inside the departments and other public entities who were asked to do the frontline access and privacy work were mostly low-rated employees. By that I mean that by Nunavut standards, they're just not paid very much. And then there's another issue, Ron, which again, it might not be unique to Nunavut, but almost, and that is because there's essentially no private housing market, any government job that you really want to attract people to has to come with a government housing unit. And these access and privacy jobs did not. So they were relatively low-pay, they did not come with housing, which meant that the only people really who were applying for them were entry-level people, often with no experience in government whatsoever, no experience in access and privacy whatsoever.

And you can work with them, you can train them, but you can't just hire somebody and then just hand them experience. And my view has always been that access and privacy works best when you have relatively senior people doing the work. Like policy analysts plus, people who've been around for a while and know how their department works and where, for example, records are and the places you might not know about unless you have a lot of experience. But instead of that, Nunavut was getting relatively junior people to do this work and predictably, running into problems. So one of the things I said to the committee was, look, "We can talk about changes to the law for a year or for the next decade, but nothing fundamental is going to change until you get experienced, well-paid people into these roles." Now there are some people in the system in Nunavut who are more senior, but invariably those people have other busy regular jobs.

And the expression that's used here, I don't know if it's used in Saskatchewan or elsewhere is, "They do the work off the side of their desk."

Ron Kruzeniski:

Correct.

Graham Steele:

They do it if they have time when they have time. Their judgement is really good, but they really hate doing the work because they consider it to be a burdensome add-on. So, this is a message that I was delivering to the MLAs is, "If there are problems in the system and there are, nothing is going to change until the people doing the work are properly paid." And I just have to leave that with them because they've known for a long time that that was an issue. But that's the kind of thing that I'm dealing with in Nunavut, Ron, that where I look at the situation and I think, "Nothing fundamental is going to change until that thing changes." And once a pay rating gets locked in, oh my goodness, it is so hard to change.

Ron Kruzeniski:

Right. We have, I think a similar issue in terms of staff who, rural municipalities will have an administrator. Well, the smaller municipalities will have an administrator who is part-time, but they have a whole bunch of other jobs to do, or tasks to do. And then since maybe they're the only employee of the municipality or the only administrator person, they get saddled with access requests. And if they get their first access request, that's really a challenge for them. And we do as much kind of coaching and hand-holding as we can, but at the end of the day, we have to make a call as to whether the RM is right or wrong. So it's kind of a tricky balancing, as I think I heard you say earlier, you only have to work with some of these people and coach them along just on the basics.

Graham Steele:

Yeah, and that's something, it's not my favourite part of the job. And of course there are other people to help them as well. What I would like to do is help Nunavut get from good to excellent. That's what we all aspire to, I think. And certainly the people of Nunavut deserve good government. They deserve to get accurate and timely records from their government. They deserve to have their privacy protected as well as it can be. But it's hard to do that when the people primarily responsible for it are learning on the job. So there's a long way to go to get there. And in fact, it's interesting what you say about municipalities. Municipalities are not covered by access and privacy laws in Nunavut or the other territories. And I believe it's largely because of the exact issue that you talked about. They're just so small, the staff don't have the background or experience or the time to work on it, even though obviously it's desirable that municipalities should be subject to access to information.

Ron Kruzeniski:

So, in Saskatchewan, our whole northern part of the province you could say is rural. It's northern, it's remote, distances are great, populations are small, and some of that really outside of Iqaluit that applies to Nunavut. What's your thoughts about access and privacy and the challenges in rural remote areas?

Graham Steele:

It's hard to grasp how enormous Nunavut really is. I mean, in southern terms, if I can use that expression, it stretches from Edmonton in the west, to the Quebec-New Brunswick border in the East. It's just an enormous area. There's no roads between communities. There's no roads to get to any one of the Nunavut communities. There's 25 communities spread over an enormous area, and the largest of them, Iqaluit, is still only 9,000 people, and the second largest is about 3000 people, and it goes on down from there. There's lots of resource issues such as no high-speed internet. So access and privacy work becomes more difficult because of the relative lack of resources and just how expensive every single thing is, as well as the constant turnover of people. People who may come to Nunavut with the best of intentions but might not understand Inuit culture and histories, almost certainly do not know the Inuit language.

They may come from southern Canada without much experience working in a small town or how they might have to adjust what they know from the south to this new northern setting. So for example, Ron, on the privacy side, I don't know what it's like in Northern Saskatchewan or other rural areas, but in Nunavut, a lot of the privacy issues seem to come down to things like people talking in airports or on an airplane or somebody is sitting at the front desk of a community health centre and saying things in front of a waiting room that they shouldn't be saying. The misdirected faxes and misdirected emails that I know every jurisdiction is dealing with. But these things take on a special importance and significance, I think, in small isolated communities where everybody does know everybody and where you have to

take care, I think to be even more careful than you have ever been in your life before about what you say and who you say it to and what happens to the pieces of paper that you're dealing with.

Privacy is very, very difficult to maintain in very small communities. But as I said before, the people of Nunavut deserve it. Just because they live in small, isolated communities where everything is expensive and life can be hard, doesn't mean they deserve any less than other Canadians receive in terms of access to information and protection of their privacy. And I think in that kind of rural and remote setting, extra care is needed and extra steps are necessary to make sure that the people of Nunavut get the same protections that other Canadians receive and maybe take for granted.

Ron Kruzeniski:

Yeah, that's a good point. And it forces me to think about and rethink Northern Saskatchewan, because some of the same things. Maybe a few more roads, when you said the communities aren't connected by roads, but I presume people are travelling a lot by airplane, I guess no other choice.

Graham Steele:

Right, but of course internal travel inside Nunavut is tremendously expensive. Horrendously expensive. Unbelievably expensive, to the point where a lot of local people will not travel, say from Iqaluit back to their home community because it is so expensive. Let's say you want to take family of four to travel, to visit family in a small community, which may not be all that far away by plane, but you're looking in many, many thousands of dollars. And in terms of the work that I do, it means that if I ever wanted to do an investigation in another community, I have to think very carefully about how much it's going to cost. Is it worth the cost? Or is it something that I should try and do remotely? It's a constant challenge when you're dealing with those kind of distances and those kind of costs.

Ron Kruzeniski:

Well, Graham, I am so pleased that we've had this time to chat and kind of covered a good number of issues. And glad you issued your annual report, which caused me to say, "Hey, we should talk about some of those things." So thanks for doing this and really appreciate it and we'll see you, I guess maybe the next Federal Provincial conference.

Graham Steele:

That's great, Ron, thanks very much for the opportunity to talk with you.