

## **Transcript Episode 19 Part I Michael Harvey**

### **Ron Kruzeniski:**

Today, I have the pleasure of talking to Michael Harvey, who is Information and Privacy Commissioner for Newfoundland. And Newfoundland has had a significant breach, and his office has issued a report regarding Eastern Health. The main purpose of this podcast is to talk about that breach, although we may start with talking a little bit about Michael's history and his goals for the office. Welcome, Michael.

### **Michael Harvey:**

Thank you very much, Ron. It's an honour to be on your podcast.

### **Ron Kruzeniski:**

So, before you got into the access and privacy world, you obviously had a career and did all kinds of interesting things. And I wondered if you'd just tell our listeners about some of the things you did before becoming Commissioner?

### **Michael Harvey:**

Sure, I'd be happy to do that. So I've been Commissioner now for about four years. And before that, I spent my career in the Provincial Public Service. Most of it was within central agencies. I started out in our intergovernmental affairs. So people who are unfamiliar with the general structure of government, every provincial government has its own internal foreign affairs office, but foreign affairs, vis-a-vis the other provinces and territories and the provincial government. So that's where I started. My academic background is in political science and comparative multi-level systems of government and federalism and that kind of thing. So that's where I started. But I also served in the Cabinet Office for a number of years.

But most recently, I was in the Department of Health and Community Services. So I was Assistant Deputy Minister of Health for four years there, and responsible for policy and performance monitoring. I had research in my portfolio. And then, over the four years, I gradually got more and more lines of business, as we government departments are forever being restructured, and I ended up with more and more stuff. But it's the health information and research stuff that really grabbed my attention. And in that capacity, I sat on the boards of the Centre for Health Information, and our local health research ethics authority. And I really developed an interest and a passion for health information in particular. And so when the opportunity to apply to be the Information and Privacy Commissioner arose, I jumped at it, and I'm really happy that I did.

I should point out, and this is a good opportunity for me to say at the outset of the podcast, that my role in health community services turned out to be a little meaningful as it relates to this investigation. About a year and a half into the investigation, the government decided to press me on the notion of reasonable apprehension of bias, if my roles as an Assistant Deputy Minister of Health, and in particular the board memberships that I had in that capacity, created a reasonable apprehension of bias. So I had obviously thought about that question myself before I even launched the investigation. And I had done an analysis of that, and determined that I did not, and that I was free to conduct the investigation. But, ultimately, when the government made a court application to have me prevented from doing that, I decided that it would be much more expedient not to fight it. Because if I did, it would take more than a year, I would expect, to resolve this in the courts. And so my real priority was to have the investigation concluded, and to have the report issued, rather than have it delayed.

And so for that reason, I delegated my authority to Sean Murray, who's essentially the number two here in the office. He's worked here in this office pretty much since it was created more than 15 years ago. And so I had every confidence in him, and the investigators that we have working on this file, to bring that investigation over the finish line. And they did that, and they issued their report some time ago. And now, of course, that the report is complete, and has been signed, and issued, and out there into the public domain, I no longer have to worry about reasonable apprehension bias. And so, for that reason, I can talk to you without any form of restriction here today.

**Ron Kruzeniski:**

So, as you talked, I spent a good part of yesterday reading the office's report, and I want to get to that, but I have a couple of curiosity questions before that. As you mentioned, you've been Commissioner for four years. And I think most people when they take on the Commissioner role, they start and they say, "I have certain things I want to achieve." So my first question is, what have you been able to achieve in the last four years that you're particularly proud of?

**Michael Harvey:**

It's been an unusual four years, and so I didn't necessarily come in with a set list of things that I wanted to achieve. Circumstances have come upon us. The last four years has been dominated by a pandemic. I wasn't in the job for a year before we were hit with the pandemic. The first thing I did, really, on the job, and I think what a lot of people do, is really try to get their head around the job that they've got. The first thing that I did was try to figure out, how does this office work? And what do we do? And what are the workflows? And so I really put a priority on trying to digitize and formalize the workflows in the office. Because I had come from pretty formal work environments, and this work environment was less formalized, and certainly less digitized than I was used to. And so I really wanted to formalize everything and digitize it. And so that was the first thing I did.

Really, I think, fortunate that I did so because when we had to pivot, during the election, to working remotely, we were quite capable to do so. And we pivoted to a remote workforce, and were able to handle our main lines of business much more easily. Our main lines of business, of course, are, as you know better than anyone, producing an ongoing stream of investigations and decisions on mainly access matters. So that, no matter what else we do on privacy matters... It seems that I talk, and I expect the same is true for you, Ron, I talk about privacy a lot. Most of the work that I do is on access, and all these access to information investigations. And they spiked during the pandemic in a very significant way, both the number of access requests to public bodies in the province and, proportionally, the number of complaints about them. And so we were able to pivot and handle all of those.

The number of reports that we issued in calendar year 2021 was almost twice as many as in the previous year. And we were able to do that relatively smoothly and, in large part, remotely from our dining room tables, and from our bedrooms, and home offices relatively smoothly. And I'm proud for the prep work that we did and for managing that, but very proud of all my staff for being able to do that.

A couple of other highlights that I want to talk about are also during the pandemic, we, as Commissioners, acted together collaboratively in a number of ways. I think that may be one of the things I'll end up being most proud about is how I work collaboratively with Commissioners. And I hope to contribute to the increased collaboration of Commissioners. Like I said before, I started in intergovernmental affairs, so the idea of working with an intergovernmental table is second nature to me. That's just how I think. And particularly coming from a small jurisdiction, I'm always thinking about, how do I punch above my weight? How does little Newfoundland and Labrador leverage the resources of all of our counterparts elsewhere so that, together, we can be more than the sum of our parts?

And this was really important during the pandemic because there were a couple of topics that we tackled together that I think made a real difference. The first one, early in the pandemic, we were, I think, legitimately afraid that we might... Because we didn't know how bad this pandemic was going to be, and if we might be at the top of a slippery slope of a pretty dystopian outcome with broad state surveillance. And we started to see apps emerge. The app that eventually did emerge was called COVID Alert. But the apps that we started to see in certain countries around the world were tracking people to see where they went to try to get some data on surveillance. And try to give people an alert if they'd been in contact with anyone with COVID. And some of the early apps that we saw were collecting personal information about people to try to achieve that outcome. I think we were concerned about, "Well, geez, where is this heading? In terms of broad state surveillance, where could it end?"

And at the same time, there were these apps emerging that were very cleverly designed to do the same thing, but without collecting any personal information. And we decided, as a group, to come out and publicize our privacy principles, publicize our concern. But then, also, recognize the real policy imperative and say, "If you're going to do this, do it this way." And we were listened to. And so to come up with that joint statement in the middle of the pandemic, to seize exactly the right time to come out with it, and then get those ideas out there, and then work afterwards in the way that we did, and we divided our labour to a certain extent. Some of us entered into working groups, and we all individually worked with our governments. Now, I think it really showed our capacity to make a difference, and I think it did.

Now, I think we all had our doubts at the beginning on whether these apps were going to work. And I think, ultimately, they didn't. But that is what it was. I think that we made a real difference in nudging the government away from a different type of app that would've been of much greater concern. We did the same thing a little later, and a little differently, the Vax Pass, that's what we called it here. I think it might have been called different things in different provinces. The app people had on their phone to get in different establishments.

And so we collaborated together. We thought about when is the right time to come out with our statement on this? And what are we going to say when we come out? If anything, this was a bit of a greater concern because this app did collect personal information. And we had our concerns about it, but I think it just shows how we could collaborate together. And when we came out with statements, we could make a real difference. So I'm very proud of the role that I, and my office, played in that, and that, together, we all did in contributing.

And then, after that was all over in 2022, I was really thrilled to be able to welcome you, Ron, and all of our colleagues here, to St. John's to have our annual FPT meeting. And we did a lot of work in the run-up to that. But we also established monthly meetings at which we talked about all manner of things. And then, when we got together in St. John's, we issued two statements on digital ID and on facial recognition, both of which were... People paid attention to this. And I think these things make a difference.

So I think I'm really proud of all of that, and I think it's really in the spirit of public service. I'm happy that the things I'm most proud about are the things I've done together with other people, like you, as a colleague.

**Ron Kruzeniski:**

Well, that's great. And I'm glad you mentioned hosting the Commissioners last fall. That was a great conference. And the fact that we passed two resolutions, I think, was significant, at least I thought it was, in terms of... I think in the past, the Commissioners maybe did one, but we did two, so that was great.

So the next part, you'll get the sense that I'm a little bit goals oriented. You have X amount of years left in your term. And before your term is up, and I'm not sure whether renewal is possible, what things would you like to achieve in your office before you hang up the cleats or move on to something else?

**Michael Harvey:**

Yeah, I do have the potential for a second term, but who knows about that? But definitely in the last two years of this term, I think the focus that I've given on health information is likely to continue. I think that I'm going to be very interested in what happens with artificial intelligence, one way or the other. I think that's really going to be a main focus for the next two years. Those are things that, whether or not I want to, I'm going to be looking at those things. But I think the one thing that I'm going to choose to really focus on, and try to dedicate energy, is on privacy issues related to children and youth, both within the education system and outside. But definitely with a focus on what's going on in our schools, and what kind of applications are being used there, and the privacy implications of that. But, also, privacy is part of the curriculum. That's a real interest of mine that I want to prioritize in the last two years of my term.

**Ron Kruzeniski:**

Excellent, excellent. I think there is discussion about a possible resolution on that. I assume you'll be involved in that process.

**Michael Harvey:**

Absolutely, yeah.

**Ron Kruzeniski:**

Thank you very much, Michael. And I'm glad that you've shared your background in the health sector. I think that's very helpful as, in the next part of this podcast, which we're calling Part Two, we talk about Eastern Health, the breach, and the report and recommendations. So, everybody, this is the end of Part One. Please click on Part Two, and continue listening to Michael's discussion of the breach in Newfoundland.