

Interview: Stephen Kelleher (SK)
Interviewer: Ken Novakowski (KN)
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Transcription: Cathy Walker

KN [00:00:06] Good morning. It's May the 8th, 2025. We're here today to interview Stephen Kelleher, who was at various times in his legal and judicial career was actually the chair of the BC Labour Relations Board, at times that was fairly significant for the B.C. labour movement. We're going to get to that. First, can you tell us, Stephen, the year that you were born and where you were born.

SK [00:00:35] I was born in Belleville, Ontario in 1947.

KN [00:00:39] Can you tell us something of your family? Were they favourable to unions? Did they have progressive politics? What kind of work or employment did they have?

SK [00:00:47] I didn't grow up in a trade union family, it was kind of the opposite. My dad was with the Bank of Montreal, and I think the banks felt that if the NDP ever got in, or maybe it was the CCF then, that the banks would be nationalized. I wouldn't call it a trade-union family at all. He certainly wasn't anti-union, but I didn't have that sort of upbringing.

KN [00:01:20] Can you tell us a bit about growing up, your school experiences, up to and including your years at Sir George Williams University?

SK [00:01:29] The bank moved people around and so I was born in Belleville but I lived in Chatham, Toronto, Ottawa, Montreal, Ottawa, Montreal again and I think I went to six elementary schools. Then he was moved to Vancouver so the only reason I'm here is because of some decision made at head office of the bank in Montreal deciding to send John Kelleher to Vancouver. I moved here, but I did have the benefit of five years in Montreal, including all of high school and first year university, (actually it's six or seven years). That's the city that was home for so long and where I still have friends. I went to Sir George Williams, as you say, in first year. At the end of first year came out here, transferred to UBC and finished my undergrad. Then eventually went back to law school in 1970 and finished law school in '73.

KN [00:02:53] Is there anything that stood out for you in terms of your law school experience at UBC? Further to that, it seems as though, fairly soon after getting your law degree, you became involved in assisting in the development of the B.C. Labour Code of Bill King, the Labour Minister of the Barrett NDP government.

SK [00:03:15] That's right. A significant event in my law school days was my experience having Jim Matkin as a professor and then as a prof that I worked for. I would do research for him for not very much money per hour. He got interested in labour law and so I was getting tasks to do in labour law. Then I took the course from him. This was all before, this was probably before Barrett was even elected. Then, when Premier Barrett wanted to develop the Labour Code, he appointed three people: Noel Hall, who taught in the commerce faculty at UBC, Ted McTaggart, who was a union-side lawyer and later a judge, and this Jim Matkin. Matkin asked me to put off my articles for a bit and work with them on putting that together. That was a great opportunity. It also meant that when the Labour Code was enacted there was a lot of work for a new lawyer. Lawyers that did a little bit of

labour, stopped dabbling in it, because it was a completely new statute and new concepts. Of course, these concepts I'd been taught in a reform-minded course. When Jim Matkin taught labour law, he taught it from the point of view of somebody who'd studied at Harvard. A lot of the notions of American labour law in those days were imported into our Labour Code, such as the ally doctrine in picketing, and such as the single co-employer, the notion that if you spin off a company, that doesn't get rid of the certification. Those kind of principles were developed by the National Labor Relations Board. I had the benefit of some familiarity with it

KN [00:05:37] It seems as though you initially started your legal career as a management-side lawyer, and yet you soon developed an open desire to do labour-side work. Can you please tell us about that and how you came to be a vice-chair of the Labour Relations Board in 1980 and then chair in 1982 at the age of 35.

SK [00:05:59] Yes, I guess I was 34. First of all, I was representing employers and by then I'd developed, not surprisingly, a belief in collective bargaining. The principles of the Labour Code is that employees have the right to collective representation and this Labour Code regulates it. Acting for management was interesting, but there were some files on the management side that aren't that much fun—employers who resist the certification and who engage in unfair labour practices. There are a lot of employers who don't. MacMillan-Bloedel and the mining industry, they're unionized, and of course, the public sector—they are large unionized employers. It's just a matter of playing by the rules. There are disputes that go to arbitration, there are disputes to go to the Labour Board, but the management-side representation of opposing a certification for me was a bit tedious, so I was interested in doing both kinds. In B.C. unlike most areas of the law, labour lawyers are on one side or the other. I remember a particular client, I thought I should give them a heads up that I was interested in doing some union-side work. This fellow said to me, 'Well you be sure and let me know when you start because that's the last file you'll get from us.' It was a bit like, it was like religion, you're on one side or the other.

SK [00:07:58] Don Monroe had left our firm and had become vice chair and then chair of the Labour Relations Board. He succeeded Paul Weiler. In 1980, there was a vacancy and Don suggested me to government and the government of the day then appointed me effective January 1, 1981, I became a vice chair. And that year, sometime in the later part of 1981, Don retired as chair. He was 35 too and it was time for him to move on. I was asked to replace him as chair, so there it was. Everyone was young in the sense that this Labour Code was new and people that were active in the area, like Rod Germaine and John Baigent and Don Monroe and many others, were all of an age. The 50-year-olds were not doing that. I remember Harry Rankin at one Labour Board hearing, but not very often did we see him.

KN [00:09:23] Interesting. You're chair of the BC Labour Relations Board, and then Art Kube, who in his capacity as Director of the Canadian Labour Congress in B.C., asked you about how working people could access the Labour Relations Board to deal with workplace issues. In response, you actually offered to, and did, go to the Harrison Winter School in early 1983 to offer a workshop on this matter. Can you tell us a bit more about your experience?

SK [00:09:59] Art called me. First of all you have to keep in mind that I was appointed by a Social Credit government. I was not an NDP appointee. My background was on the management side before I came to the Board. There was a certain—people weren't sure what they had here with this guy. When Art called me up and said, he was kind of

criticizing the Board for not being accessible to working people, he told me I should have a book, 'we should put out a book on how to do this'. I saw it as an opportunity to connect with the labour movement and with working people and saying, I'd come to Harrison. I knew about the winter school, I think he ran it. I said I would come to Harrison and give a three or four day course on appearing in front of the Board. I think he wasn't sure that I really meant it, that this Socred hack was actually offering to come to come Harrison, but in fact it was very much in my interest to do that. I did that, and then I continued to do it for many years, both as a Labour Board representative, but later I became an arbitrator after that. Training staff reps to present arbitration was bread and butter. I actually did something similar at the Employers' Council for lay people presenting cases. That was my dealings with Art, my first dealings with Art.

KN [00:12:09] You were in the position of chair of the LRB in 1983 when the province was facing a regressive legislative package introduced by the Social Credit Bill Bennett government that included significant cuts to the rights of unions and working people generally. Labour and community reacted with Operation Solidarity and the Solidarity Coalition. Can you talk about your involvement in this major dispute which seemed headed for a general strike?

SK [00:12:39] The Board was involved on several levels. First of all, as the dispute became more and more clear and people became dug in, we had lots of meetings at the Board on the macro level, not talking about the bargaining dispute with the BCGEU but more people from the [BC] Fed, Mike Kramer and Larry [Kuehn] from the Teachers' Union, BCTF, and Jack Munro and people on the government side. Jim Matkin was Minister of Intergovernmental Affairs by then. Out of the Premier's office, Norman Spector. We'd have these meetings to talk about how dug in we were, how trouble was coming. I was doing some of the mediation of the dispute between the government and the GEU. Then the dispute happened, and they went out first. There were a lot of picketing disputes, and this is one of the changes of the Labour Code. Before the Labour Code, picketing disputes went to court. Now picketing was in our jurisdiction so we had a lot of those. We had disputes about essential services that were going on so we were hearing things on different floors of the Board and at different times. It was a very, very hectic time and eventually two things happened. Vince Ready became the mediator of the dispute between the government and the GEU. Then there were discussions at the wider level that involved eventually Jack Munro and the government. I don't remember who else, but it wasn't me. I wasn't in Kelowna. We were busy doing our thing in Vancouver, but that was all happening. It was a very, very stressful time, even though by then I was 36 or 37 years old, it seemed like a busy time.

SK [00:15:28] I might say something about the challenge of being chair when the government didn't—the Social Credit government didn't really feel like they had ownership of the Labour Code. It was something that had been brought in by, it was brought, the only person that voted against it was, I think Harold Steeves was an MLA, and he didn't like the Section 70, the mandatory arbitration for first contract disputes. The rest of it was unanimous in the House, except for him, ironically. When the government changed, and this is before I got there, but when Paul was there or maybe Don was chair when the government changed. They didn't really—there was a disconnect. They didn't come into it with—Bill King was very highly regarded by both sides and there was no one, no equivalent on the other side. People joked that that the government would like to ask Bill King to stay on as Labour Minister, but they weren't sure that would go over. Allan Williams became the Labour Minister. He did a very good job and worked well with Don Monroe.

SK [00:17:01] When I became chair, by then Jack Heinrich from Prince George was the labour minister, and a very nice guy, but again, there wasn't the same understanding of how things worked. An example is filling Board vacancies. The Labour Board had independent vice-chairs, but it also had part-time labour and part-time union members of the Board. We'd sit typically as a panel of three, a vice-chair or the chair, a union and an employer member. I remember that I wanted the government to appoint Jack Gerow as a member of the Board, and the minister, Jack Heinrich, came back to me and said, 'You know, I took this to cabinet and they said, that guy is NDP.' I said, 'Well, you know, Jack, everybody in the labour movement is either NDP or pretends to be. You know, that's just the way it is.' He said, 'You can't ask the government to do that.' He told me there was one particular minister who was very much of that view and I said, 'Well, let's go and see that minister.' because it was kind of basic to what we were doing and I wasn't asking them to do anything improper. We went to see the minister. It was the Attorney General, Brian Smith. He had a fellow in the office with him who said, 'Now Steve, you've got to understand that we can't be doing that.' This fellow said he'd worked with Bill Davis in the Ontario government. He said, 'You wouldn't ask Bill Davis to appoint an NDP member, a member of the Labour Board.' I don't know how I came up with this, but it did occur to me in the meeting, I said, 'Isn't Stephen Lewis a member the Ontario Labour Relations Board?' They agreed that he was. Anyway, long story short, Jack Gerow became a member of the Board. It was just a difference, it wasn't an anti-union attitude so much as just not understanding what our Board was.

SK [00:19:34] Similarly, another challenge for me was when the government changes, they want to change all the labour laws. They say it's our turn and now we're going to have representation votes in certification and we're going to ease up on this section and ease up that section. There's a question, a good question about what my role is in that, whether I should just stay out of it as the neutral. I decided not to do that and there might be different views on what's appropriate but I thought that they weren't getting the—.

SK [00:20:19] First of all I considered the Labour Code a little like a collective agreement. There's some stuff in there that unions like and some stuff in there that employers like but it's some sort of striking a balance. My concern was that if the cabinet just had their way with the Labour Code, it would do damage to it as a neutral document for going forward for fostering industrial peace. I would say to the minister, 'Oh that's not a very good idea what you're suggesting for that section.' He'd show me the bill that was about to go ahead and I'd say 'I don't know if you want to do that.' That was a role I played, rightly or wrongly. I thought they're not getting it anywhere else. That was part of the challenge of being chair when the government didn't really understand or didn't—they weren't part of the factual or contextual matrix that went into the Board in the first place.

KN [00:21:38] Did the views you expressed have any impact on what they eventually did?

SK [00:21:43] Some of them. Did they all? No.

KN [00:21:52] Can you talk a bit about the crisis in Tumbler Ridge that you were involved in in 1984 and how that played out?

SK [00:22:00] That was a crisis to me. What happened was Tumbler Ridge was being built and the Building Trades, in those days the Building Trades wanted to invoke the non-affiliation clause and have it all built union. The government thought that this would be an open site. So that matter came before the Board. Vice-chair Foley had to decide what the status, how Tumbler Ridge would turn out. The hearing had barely started and a Minister

from the north said to the media, 'I really don't care what the Labour Relations Board decides, this is going to be an open shop.' I took that as a challenge to our independence and quite a serious matter. I said to the media that in my—First of all I went to my Minister. My Minister wasn't sympathetic. It was a different minister and he was more, what he said was, 'Well, he's a colleague, I'm not going to criticize a colleague of mine.' I said to the media, 'It's inappropriate.' I remember the words I said because I thought about it. It's inappropriate for a Minister of the Crown to comment in a partisan way on a matter that's before the Board. The minister, that minister, replied by saying, 'Well, that's what Stephen Kelleher thinks, but I don't really care about what Stephen Kelleher thinks.' Then we had a full-blown crisis, in my mind. My vice chair's minds 'What are you going to do now?' I got some legal advice and we had some legal avenues open to us, but before we had to go much further, I had Norman Spector and Jim Matkin, Norman in the Premier's office, and Jim was the Minister of Intergovernmental Affairs, I think. They saw my problem and worked something out with me and with Premier Bennett. It amounted to a conversation that Mr. Bennett and I had on the phone that was on the record. He said that this is a decision for the Labour Board to make recognizing our independence and that resolved the matter. Not to be critical of the people who took a different view of it but they were governing without a really good understanding of what labour relations legislation was for and what the Labour Board was for. That blew over.

KN [00:25:26] Sounds like a good outcome.

SK [00:25:28] Certainly was, certainly was.

KN [00:25:32] In 1984 you stepped down from the LRB again and became a mediator/arbitrator, sharing an office with Vince Ready for the next 16 years. Can you highlight some of your experiences during that period of time?

SK [00:25:52] It was time to leave the Board. The government wasn't really that supportive and I ended up having people appointed vice chairs who I wasn't consulted about. I thought it was a good time for someone else to take over. I thought I'd represented management as a lawyer, and instead of going back to that, I thought I should see if I can get some work as an arbitrator on the basis that I'd had three or four years of neutral work as a Labour Board member and chair. That turned out to be fine. Vince and I didn't get together right away, but we did a little bit later, maybe a year later. We shared an office. It was a very good—We got along very well and we still do. He was a very good person to share an office with and I think it was just, we were good for each other. I had a very peaceful time, Vince and I, I hope, don't worry about the little things. It was very easy to share an office with him. He got involved in disputes, and I would, and it was kind of fun to come back to the office and talk about things. He has a great style, as you know. The other thing is, even though I was out of the Labour Board, part of what happened after me is that Mr. Vander Zalm became premier. Things went a bit sideways, and there was a boycott of the Labour Board. It was renamed for a while, the Industrial Relations Council—and that was boycotted.

KN [00:28:24] Boycotted by whom?

SK [00:28:24] By the labour movement and so all of a sudden there was work that otherwise would have gone to the Board such as mediation of collective bargaining disputes, was done privately. All of us who were active, Vince always was as much a mediator as an arbitrator, maybe even more so, and had worked for the federal mediation people before but a lot of us, Don Monroe, myself, (sorry it fails me but there are lots of

people), Alan Hope, all of a sudden we're learning to be mediators and people were bringing private disputes to them instead of going to the government for mediation. We learned in that way and certainly in those days there were a lot of district bargaining in the BCTF. There were district-by-district bargaining and there was lots of. I'd been in lots of places, spent the weekend in Salmon Arm and Prince George and lots of places doing bargaining. In Cowichan doing bargaining.

SK [00:29:45] The other thing that came along for me was that there was a strike by the GEU. I think it was getting ready for a strike, and the GEU did not want to bargain, did not want deal with essential services at the Board. I ended up chairing a process. I borrowed Grant McArthur from the Labour Relations Board. We had hearings and sort of mediation and so on and worked out essential services for that. I think I did it in healthcare too. It was very informal because I didn't have an office or anything. I remember getting calls in my car when you could take a call in your car. They'd say, for some reason I remember this, that there were patients developing bedsores at Evergreen House in North Vancouver, which is the long-term care facility part of Lions Gate because there weren't sufficient staff. I made a few calls and then ordered some staff in. That's how ad hoc it was. That was certainly an interesting aspect of my, like not constant, but here and there, the mediation and the essential service designation.

KN [00:31:28] You actually became chair of the LRB again in 2000-2001. Can you tell us how this came to be and some of the issues that you became involved with during it?

SK [00:31:42] What happened was Keith Oleksiuk died very young and very tragically and there was no Labour Board chair. Joy MacPhail asked me to look for a chair. They had the feeling, it turned out they weren't far off, that they were going to lose the coming election. Everybody had that feeling. I was looking for somebody who was mutually acceptable and that turned out to be a non-existent person because I'm sure the management community thought they could do better. They could just decide who the chair was once the government changed. The union movement didn't have much sway in that. I was unsuccessful so Joy said to me, 'Why don't you do it?' 'Well, I'm not gonna do it.' 'Why don't do it part time?' We worked this out and I was chair, appointed chair under the legislation, but I spent Fridays there. The Board has a very professional staff and the deputy chair, Fran Watters, she really ran the Board on a day-to-day basis and I was involved for decisions that had to be made. I thought it worked fine. It was a little less intimidating to go back when I was 48 years old instead of 35, or whatever it was, 2000. I was older and the disputes didn't seem quite as—I didn't lose as much sleep as I would during a province-wide pulp strike or as I had the first time around. I stayed on. This new NDP Labour Board chair stayed on and I eventually phoned the Liberal Minister of Labour and said, 'When are you guys going to appoint a chair?' 'Oh,' he said, 'We thought you might just stay there on a one day a week basis and I said, 'No, I'm not. Thank you very much.' I did not get to go from being a Socred hack to an NDP hack to a Liberal hack. Instead they eventually appointed Brent Mullins, who was the chair, and that was the end of my involvement at the LRB. So far, I don't know what could happen in the future.

KN [00:34:53] Were there any significant strikes or developments during that time that you were—

SK [00:34:56] I don't— No, it was a different time. By then, (in my first go-round, wildcat strikes were not uncommon) they became less common as employers sometimes would, they'd go on strike and the employer wouldn't do anything, would underreact. No, it was

not, and we didn't have anything approaching a general strike. It was, as far as I recall, it was less eventful, less interesting, you might say, than my first time.

KN [00:35:52] In 2003, you were appointed to the Supreme Court of B.C., a position you held until you retired in 2020. Since then, you have again become involved in mediation/arbitration work. Can you tell us about any experiences that you've had in this role?

SK [00:36:13] When I retired from the court, it was right in the midst of COVID. I was also, I was ready to retire. I spent some time, lots of time with grandkids and did lots of traveling. About three years later, I thought, it might be fun to do the odd arbitration and mediation. I let a few people know. I've been, since then, I've more or less been busy, certainly not doing it full-time. I think in terms of FTEs, I think I'm about .15 of an FTE. Things have changed. For one thing, when you have a hearing, the first thing everybody needs is where to plug in their devices. The second thing is that a lot of the hearings are virtual. It's up to the parties. That's a big difference between arbitrating and being the Labour Board chair or the court, the fact that the parties own the process. They agreed on you and you are their person. If they tell you they want to do it via Zoom, it's via Zoom. In my days at the Labour Board, people would say, 'Oh, counsel discussed this. We're going to argue the case in the morning.' I'd say, 'Well actually, no, you're going to argue it today. We've got other things to get on with and I'd like argument today.' As an arbitrator, you never have it. If they want to argue it in the morning, if they want to start at 1 in the afternoon, it's all fine, you just don't have that. It's not up to you, it's up to them. The parties own the process.

SK [00:38:20] I even recently learned, I thought it was either a virtual hearing or an in-person hearing, because I'm old fashioned perhaps, I prefer the in-person hearing. I like having people there, especially in mediation. I like the interaction, but there's something called the hybrid that everybody except me knows about and that is that, I've got one coming up where I say, the hearing's going to be via Zoom, but I'll be doing it from a meeting room. If anybody wants to come and do the hearing in the meeting room, that's fine. These virtual hearings are very popular. One, it's very convenient for lawyers not to leave their office, but more to the point there are lots of times—I had the IWA on the Island—not the IWA, the Steelworkers, formerly the IWA, where the operation was north Island and the office of the union was in Duncan and the company people (it was in mediation) were in Toronto. Of course it made great sense to do the whole thing by Zoom. That's the way it is.

KN [00:39:57] I'm wondering if there's anything else you would like to comment on regarding your experiences with the LRB or your work as a mediator or arbitrator?

SK [00:40:11] No, nothing comes to mind. It's still a great community. Labour-side lawyers and union-side lawyers get together in the labour section of the Canadian Bar. There is a community of lawyers and also senior practitioners that respect each other. It's good to be back doing some, but 0.15 is about right.

KN [00:40:43] Thank you very much, Stephen. We appreciate you coming in.

SK [00:40:49] Thanks, Ken.