

Interview: Sandra Banister (SB)
Interviewer: Carmela Allevato (CA)
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Transcription: Ariel Becherer

CA [00:00:05] Good morning. It's July 29th, 2024. And I'm Carmela Allevato, and I'm here to interview one of the eminent labour law lawyers in British Columbia, Sandra Bannister. Good morning, Sandra.

SB [00:00:17] Good morning, Carmela.

CA [00:00:18] So can you, just for the record, tell us your full name.

SB [00:00:23] Sandra Isobel Banister.

CA [00:00:24] Okay. And where were you born?

SB [00:00:27] I was born in Vancouver.

CA [00:00:28] Did you grow up in Vancouver?

SB [00:00:29] I did. I grew up in Vancouver's East End.

CA [00:00:32] Oh, did you?

SB [00:00:34] Yeah. My whole life, actually, until I moved to North Burnaby, after I got married.

CA [00:00:39] Ah. Did you go to high school in—

SB [00:00:41] I did. I went to Templeton.

CA [00:00:43] Excellent. So what was your family like when you were a child?

SB [00:00:49] Well, my mum was a stay-at-home mum. I had one brother—have one brother. My dad was a lineman with IBEW.

CA [00:00:57] Okay. And so were union issues and political issues ever part of your family discussions?

SB [00:01:04] Yeah, of course. I mean, I remember one time when my dad was on strike and he went to the States for work and came back really quickly because the worker's comp rules were so lax there. It was really, really bad, so he came back. And so I can remember things being tough, you know, when you're out on strike and you got no income coming in.

CA [00:01:29] What about political activity? Was there political activity around your home when you were growing up?

SB [00:01:35] They always voted. They always voted NDP, but they weren't active in in any parties.

SB [00:01:41] Okay. After high school, you went to university, and where did you go?

SB [00:01:47] I did. I went to UBC for both my undergrad and my law degree.

CA [00:01:50] What did you study at UBC?

SB [00:01:52] Well, I did political science.

CA [00:01:54] Of course.

SB [00:01:54] And I actually was doing pre-med requirements as well in my undergrad until I had to take a physics class and buy a calculator. And the calculator, I remember it was \$100, and it was so much money and I thought, you know, \$100 and I really don't like blood. So I think I'll do law instead.

CA [00:02:15] Were you active in student politics when you were at UBC?

SB [00:02:19] I actually got active in student politics when I was in high school.

CA [00:02:23] Okay. Tell us about that.

SB [00:02:24] There was a student movement across Vancouver. I think my first really political thing was where we had a pant-in. Girls weren't allowed to wear pants to school. All of the high schools walked out and I remember walking across the Georgia Viaduct with all the students, and then they let us wear pantsuits after that.

CA [00:02:48] I had no idea. That's fantastic.

SB [00:02:49] Then I was involved in, you know, student council, and through that met this Vancouver student group that was very active in those days. We started doing work on alternate schools and trying to promote a broader curriculum within our own schools. Then we did some opportunities for youth grants. We did an alternate education seminar on Salt Spring Island, and David Suzuki came and it was really exciting. That was when I was in high school. I wasn't involved in... Then when I was in first year university, well actually I was, I remember when the NDP government was elected, the Barrett government was elected and I was working bingo at the PNE, Legion Bingo. The election happened and it was so exciting. Then there was a convention and I went and joined the party and sat through the convention. Then I started getting involved in Vancouver-East politics.

CA [00:04:06] That was in the 1972 election when Barrett got elected?

SB [00:04:10] Yeah.

CA [00:04:11] That's very exciting. Then you ended up in labour law?

CA [00:04:17] I did.

CA [00:04:17] Tell us how that happened.

SB [00:04:20] Well, I think it was largely through my connections in the NDP. I had a lot of, you know, Vancouver-East there were a lot of people in the IWA. Of course, my political views aligned with the labour movement, so it seemed like a natural fit. So when I was looking for articles, I actually I only applied at Baigent & Company and at Laxton.

CA [00:04:48] Okay. And you ended up articling with John Laxton?

SB [00:04:52] I did.

CA [00:04:53] Yeah. Tell us about that experience.

SB [00:04:55] It was really exciting. I mean, we didn't just do labour law. We also did litigation, big brain injury, paraplegic, quadriplegic cases. But we were at the time in the same building as the IWA National Office. So we were in close contact all the time with the IWA, as it then was. Jack Munro was always around. When I first started I actually clerked for the B.C. Supreme Court. Then after that was over, right, I did a few months, three month trip around the world. And then I came back and started my articles. And when I started my articles, there was a big IWA strike, which was really an exciting time, you know, for a young lawyer to be involved. And it was so busy 'cause in those days a lot of applications went to court. And David Pigeon, who was the main labour partner, he would come in and shuffle out injunction applications like they were cards. And I remember Miriam Gropper and I, and she was just a one-year call and I was an articling student, going down to the court house and making the most ridiculous arguments, you know, because they'd be charged with things like assault because there had been a baseball bat on a picket line, and we were making arguments like, "there was a baseball game going on. They had mitts as well." And then on the way back, Jack Munro would often come and watch. And on the way back, we'd often stop off at the Hotel Vancouver for maybe more than one or two drinks. It was a really exciting time. In those days, the picketing rules weren't nearly as restrictive as they are now, so I always said that the IWA would picket anything that was made of wood. There were the BCRIC [British Columbia Resources Investment Corporation] offices because BCRIC had some shares in forest companies. So they'd picket the BCRIC offices and they, they would picket piers. Piers were made of wood. I don't know, they were just picketing everywhere. It was an exciting time. Then there were a lot of assaults and that kind of cases, the criminal charges that came out of those disputes that I ended up doing with Drew Schroeder, particularly up in the Prince George area.

CA [00:07:25] The BCRIC offices, just for those who might not be aware, that was during the Sacred era?

SB [00:07:34] Right.

CA [00:07:34] Do you want to just elaborate a little bit?

SB [00:07:34] There was a scam where they gave all of British Columbia shares in these corporations and ultimately they were worthless. I think I still have my share around somewhere.

CA [00:07:53] You mentioned Miriam Gropper, Miriam is a judge now? Or went on to be a judge?

SB [00:07:59] Yeah, yeah, yeah.

CA [00:08:00] That's great.

CA [00:08:02] Tell me about your political activity while you were being a labour lawyer for the IWA primarily.

SB [00:08:11] I was really involved in the NDP from the time I was in law school, I guess. I was the president of Vancouver-East NDP and involved in, Margaret Mitchell getting her nominated and working on, I guess, the first well, I worked on Patty Neal's campaign, but that was that was my first campaign. Then the Barrett, when Barrett lost the election, that was a really sad, sad day. And then very involved in the Barrett byelection when Bob Williams stepped down. Bob (who's just recently passed as well) he stepped down and there was a by-election and it was so exciting. There were all these young people in the riding. I remember we had this great big banner and we marched down Hastings Street, right down Hastings Street! And it wasn't closed! I don't know how we did it, but I remember marching down Hastings Street with this big NDP banner. Another thing that was really exciting during those days was the wage and price controls demonstration.

CA [00:09:21] Yes.

SB [00:09:22] That was in response to Trudeau bringing in wage and price controls. There was basically a general strike and that there were so many unions that participated in that. When you look back now, I think that the legislation permitted something like 10% wage increases in the first year. We thought that was terrible. Now if anyone could get 10% wage increases in a year they'd be pretty happy. But it was exciting coming together with everybody.

CA [00:09:52] Was there any involvement on the legal side during that period? Do you recall?

SB [00:10:01] Mostly it would be scrutineering elections. And when there were disputes in terms of results, no, but yeah, not really legal work. It was more from the perspective of political work. I became at one point the first vice president of the party and I was the policy chair. I was the convention chair. So it was pretty exciting for a young person to be involved at that level and to be involved with people like Dave Barrett and Bob Williams and Alex MacDonald. Then I worked on, of course, Mike Harcourt's campaign when he was nominated. I ultimately nominated Glen Clark. I'd always planned on running and then I had a young daughter and I was a single parent and the time just didn't seem right. Any of the times that the seats came up—

CA [00:11:06] There is an election coming up, you know (laughter).

SB [00:11:11] Yeah. Me and Biden.

CA [00:11:12] Oh, come on. Somehow life gets in the way of those things, doesn't it?

SB [00:11:24] It does.

CA [00:11:24] Are there any key cases that you've been involved in that you want to tell us about, that just jump out at you, in terms of advancing the rights of workers or protecting the rights of workers?

SB [00:11:38] Obviously I've been involved in a lot of cases over the years, and like Biden, my memory is fading, but one of the more recent ones that was very exciting was during the Seaspan. The Canadian Merchant Service Guild was one of my clients and they were picketing. Initially, they were picketing on Seaspan's property and then there was an altercation about where they could picket, and so they said they would move off the property to the entrance, which the Seaspan security guard said was just fine. But they didn't realize with that that was also the entrance to the Vancouver shipyards. Actually then Poly-Parties at the shipyards respected the picket line. It went to the board and my involvement was because we were federal, a federally regulated union, they sought an injunction in court against us and of course, short notice and, you know, worked the entire weekend and a million affidavits and everything. We argued the charter because, of course, federally regulated unions aren't controlled the way provincially they are by the labour code. So it's up to the courts. We had a very exciting, fun hearing in court and we prevailed. Fortunately at that time, the board hadn't ruled that the provincial unions couldn't honor the federal picket lines. That really helped the guild workers get their collective agreement. Towards the end, of course, the board overturned the original decision. Ultimately that, of course, has led to Bill 9, which is the newest change to the labour code that permits provincially certified unions to honor federal picket lines.

CA [00:13:44] I have to tell you, as someone who's also practiced labour law, that to prevail in court to defending an injunction application is astounding. So kudos to you and your firm for doing that. That's great. So that case also, as you say, also led to a change in legislation, provincial legislation. You've had a lot of involvement in legislation and labour policy in British Columbia. Tell us about that part of your work.

SB [00:14:19] Well, I guess my first involvement was I was on a commission to look into successorship in the bus industry in the Okanagan, because what they were doing was they would just flip the contracts constantly.

CA [00:14:33] Was that BC Transit, was it the municipalities?

SB [00:14:37] It was the municipalities, I believe. I think three of us, Don Jantzen, who was an IWA member and a long time New Democrat, was on that committee, myself and one other person whose name I can't remember. Anyway, it was really quite appalling because these workers would often be driving the same busses on the same routes, but suddenly they'd lost all their seniority protection and they'd lost their vacations and often had to reapply for their own jobs. We wrote a report and I'm not sure what happened. I think there may have been a change of government, and so nothing ever came of it, of course, until we got to the last labour code review. I was one of the three expert panel members, along with Mike Fleming and Barry Dong, and we looked into the issue of contract flipping and successorship. That had been a huge issue, particularly for the health care workers because of the legislation that had privatized many of the providers and we heard terrible stories about health care workers who had to re-apply for their jobs, and they ended up getting half the wages and no seniority. It was just terrible. And so the panel unanimously recommended that we change the labour code with respect to specific industries. So it wasn't a general prohibition on contract flipping, but in security and bus transportation and health care and a number of enumerated areas. We also recommended with respect to forestry—

CA [00:16:31] Oh yes?

SB [00:16:34] —because there have been massive changes in forestry where lots of the tree farm licenses, which are the way that companies get the right to harvest crown land. So that's especially during the Christy Clark era, they alienated parts of the tree farm licenses and either gave them to B.C. Timber Sales, in some cases to Indigenous bands. What happened was these workers had been certified on the land since, you know, the '30s and suddenly that land was no longer available to them. And that of course was occurring at the time as well, where the annual allowable cut was severely limited. There's been lots of trees removed from the forest industry because of parks and environmental concerns and then to take these areas and to put them out to bid or give them to Indigenous groups, where in every case they would become non-union. The panel actually split on that issue with the majority, and myself, saying that there should be a commission on forestry successorship. But I went a step further and said that I would add forestry to the the list of prohibited contract flipping. Then there was actually a commission, Vince Ready and Amanda Rogers. They got submissions from all over the place and they wrote a report recommending as well that forestry be added, but the Government hasn't acted on it, I think largely because of concerns with Indigenous claims.

CA [00:18:34] Okay.

SB [00:18:35] That's again another area that's going to come up with the current panel review that I'm on. The last panel review was in 2018. We scrambled. We went all over the province. We got all sorts of submissions from people and for the most part came up with a report that was unanimous. There were just a couple of areas where I dissented. One was the forestry, as I said, and the other was with respect to card check. So the majority said that with the changes that we had made to rebalance the code to limit employer speech, to speed up the voting process, etcetera, that we didn't see if that remedied the problems. And if not, then they would be amenable to card check. Whereas I said that card check has been the norm in Canada forever and a day. And it wasn't until the mid-eighties where some right wing governments across the country started saying, "oh no, we have to have votes." It always amazes me how employers become very democratic when it comes to employees exercising their rights to be members of unions.

CA [00:20:07] But we now have card check.

SB [00:20:09] Yes. The government ultimately — they initially brought in practically all of the recommendations that our report had made. That was in the 2019 amendments to the code. And then subsequently, the government instituted single step for card check certification.

CA [00:20:32] And the sky hasn't fallen.

SB [00:20:34] No, it doesn't seem to have, although I think the board thinks it has sometimes because there have been an awful lot of applications and so they've got a lot of applications along with a much shorter voting period because we brought in the five day vote. So I think the board is pretty stressed about it. But other than that, the sky hasn't fallen. Then, of course, there is there's the most recent code review. We were appointed in, I think it was February of this year. And that's again, Michael Fleming, Barry Dong unfortunately passed away. And so Lindsay Thompson also from Harris & Company is on the panel along with myself. We went to various places around the province. We've received way more submissions (written submissions) than we did in 2018. There's certainly a polarization between what unions want and what employers want. We're working on our report now. Right now we've got 'till August 31st, and we'll see if we get it

done on time. It's tight. There's a lot of huge issues. You know, sectoral bargaining is an enormous issue. Of course, the charter changes how that's affected picketing at the federal level. A lot of unions would like to see some changes to the restrictions on the picketing under our code, because, of course, we have amongst, if not the most restrictive picketing regulations in the country. There's some merit to some of it. Things were pretty Wild West in the eighties, as I said, picketing everything made of wood. And it's hard for workers too, who get picketed out because if you're—if you've got a collective agreement in place and you're working away, and particularly if your employer has nothing to do with the labour dispute, it's pretty hard. Workers want to express solidarity and not cross picket lines. But at the same time, people have got to put food on the table. So, you know, there's considerations both ways. To my mind, certainly if you're a related employer, it's a different scenario because you can (as was the case in the Seaspan dispute, where they're the same employer), so it made a lot of sense to be able to pick it out them and exert that kind of economic leverage. Because without that, I mean, without the economic leverage, how is a strike ever going to end?

CA [00:23:25] Right.

SB [00:23:28] So there's that issue. There is generative AI which...

CA [00:23:34] Right!

SB [00:23:35] ...who would have thought. It's changing so fast. Code review is now over five years because we recommended that. But when you look at something like AI and how it's exponentially changing the world, you've got to look ahead and see how can we deal with it? Is there a way we can deal with any aspects of it under the labour code? So there's that. Virtual picketing.

CA [00:24:02] Yes.

SB [00:24:03] Which nobody really seems to know what that means. Everybody knows what the problem is. If you've got people who are working remotely or working in a hybrid situation, how do they exert economic pressure on their employer? Particularly if they're entirely remote and there's no workers at, even if there is a head office, how does picketing the head office do anything? But at the same time, of course, you don't want to bring in a definition of picketing that would limit communications. So a lot of what unions are doing that they're calling virtual picketing is really Facebook posts and other kinds of social media messaging. And you don't want to limit that. So there are big, complicated issues, way more complicated than the last time.

CA [00:25:01] That's so great. This kind of segues well in a question which is: what do you think are some of the key issues facing workers and their unions today?

SB [00:25:19] I think one of the issues is the declining number of unionized people, particularly in the private sector. I think there's a number of reasons for that. Young people are not being educated about unions. People take things for granted. Young women just assume that everything's always been the way it is, that, you know, women had all these rights. I tell my granddaughter, "you know, women couldn't vote". They say, "what do you mean, women couldn't vote? That's ridiculous." All of the things that unions have worked for, both, you know, not only for workers directly in terms of wages and working conditions, but safety, broader social issues. Young people don't understand that. And so I think it's really important that we try and get it into the curriculum in the schools, that labour reach

out to people, to young people in particular, and get the message across. That's one of the major, major problems. There's lots of challenges within jobs. Of course, jobs are changing. You know, you look at the forest industry, for example. When I started out, it was the major industry in British Columbia. I mean, it was so big that when the contracting-out strike occurred in 1986, that at that time was a huge strike, 137 days, and the entire forest industry was on strike. And when it ended with recommendations for contracting-out grievance procedure, they appointed a court of appeal judge or court of either Supreme Court or a court of appeal judge to be the umpire. Now, you wouldn't have that today because, of course, the forest industry has shrunk in size, although it still remains a really important industry in terms of the dollars in British Columbia, particularly in the smaller communities outside of Vancouver. That's a perspective that those of us who live in the city really don't have and how important the resource industries are throughout the province. This shrinking in those big private sector jobs and with the reduction in the cut that I talked about earlier, that's also taken away jobs. So the major increases in unionization have been in the public sector. It's different, the public sector versus the private sector. The private sector is much more dollars and cents aware. Sometimes it amazes me how lucrative some of the public sector contracts are by comparison to the private sector. It's quite amazing.

CA [00:28:37] Interesting.

SB [00:28:37] Yeah.

CA [00:28:40] Over time, what have you noticed about the development of labour law?

SB [00:28:47] It's gotten more complicated. It's gotten a lot more rule based. I used to meet the grievors the night before and I'd write out my Q&A and they'd never see my Q&A and we'd do the hearing, and we'd do the hearing in a day or maybe two. Now, of course, there's particulars and exchanging documents, and it's very much like civil litigation. The hearings are getting longer and longer, more and more expensive, which is, you know, a problem for unions. They don't have the deep pockets that the employers have. And every case you do, the employer's got at least two lawyers on the other side. You know, I have a hard time justifying that. The hearings have changed and it takes a long time to get to a hearing now. We tried to ameliorate that through the expedited arbitration changes that we recommended in 2018, and I think that's helped in some cases. But there's so many cases that are just not amenable to that kind of process. The issues, of course you've got the charter. I remember when the charter was brought in. I was actually fortunate to be in Ottawa for the charter. Every MP in the country got to name a young Canadian or something, and Margaret Mitchell named me. So the government of Canada flew me to Ottawa and we had dinner with the Queen. I had a little bit of a private audience, because somehow I ended up sitting at a table with a bunch of liberal insiders and they said, "If we rush up, we're going to be there alone." So we ran up and there was the Queen and Prince Philip and Trudeau, and there were about six of us in the room chatting for about ten minutes before everyone else got there. Then I saw her, you know, we were in the crowd when she signed the proclamation to repatriate the charter. That was interesting. The charter has had profound changes on labour and in some cases we've been successful, but not all. But it always gives another perspective, another weapon in our arsenal, if you will. That's been huge. Some of the other issues, things like privacy. Privacy has had good and bad things about it. I just did a case where we were very successful, thankfully, relying on privacy because the employer had put cameras and microphones inside the workers' pickup trucks that drove them to their logging shows, where they were logging. Every day they're in the vehicle for about an hour and a half, two or three of them together. And it

was recording everything. We got a very good decision on that from Jacquie de Aguayo. Everybody got \$4,000 in damages. They had to remove the microphones and black out the cameras. That's under appeal both through 99 and 100 right now. But I'm pretty confident that will prevail. That's been good. But there are things where employers use privacy to prevent unions from getting access to information they need.

CA [00:32:37] Yes. Yes.

SB [00:32:39] That's been quite a change. Lots of changes over the years.

CA [00:32:48] What would you say to a new lawyer who might be considering going into labour law?

SB [00:32:56] Well, I think it's just a fantastic career. I've loved, well, I shouldn't say every moment of it because, there are those times where you're tearing out your hair (laughter). It's exciting, particularly when there's the labour disputes. It can be very intense. When the now Steelworkers were on strike against Western Forest products in 2019, I was in Manitoba at a lakeside cabin and I got hauled back to Vancouver for a hearing on Canada day over Teredo worms in the logs. They were trying to prevent them from picketing the logs. It can be really exciting. When you get involved in those things, it's all hands on deck. People are working around the clock and you feel real purpose. The clients are fantastic (from the labour side anyway). The grievors not always (laughter). Sometimes (I shouldn't say this), but if it wasn't for crazy grievors, I wouldn't have a job. But the unions are fantastic to work with. All of the different industries are, you know, you learn something. You get to travel around the province, go to places that you would never go to: Williams Lake, Castlegar, (Cancel-gar). We're not traveling as much now with Zoom, because it saves so much money. But I really enjoyed getting out to those places. And I love when we take a view, go into a mill or a mine or wherever it was. It's just fascinating to see how people are making a living and, keeping in touch with people and meeting all different kinds of people. You've got everything in the labour movement from your very blue collar private sector, predominantly male unions to the public sector. One of the unions I represent is the Federation of Post-Secondary Educators. They represent all of the college professors. There's such a range in the type of people you deal with, the issues you deal with. It's fantastic. Doesn't pay nearly as much as the employer side (laughter).

CA [00:35:39] But you have a sense of purpose.

SB [00:35:41] A real sense of purpose. Absolutely no regrets. I don't see stopping doing it. I'm still enjoying it for the most part. It's wonderful also to bring along younger people and mentor them. When you see them advancing and doing their first case on their own and talking to them about it and seeing how stressed out they are. It's a fabulous field to get into and it's so worthwhile. It's so important. It really actually does concern me that so many young people, if they're going into labour law, are going into the employer's side, because we need bright young minds with lots of energy to carry on the big fight.

CA [00:36:40] That was great. Wonderful.

SB [00:36:42] Thank you so much.