

Interview: John Rogers (JR)
Interviewer: Carmela Allevato (CA)
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Transcription: Warren Caragata

Carmela Allevato [00:00:05] This is Carmela Allevato on Feb. 15, 2024, on behalf of the BC Labour Heritage Centre, interviewing John Rogers. So, John, would you tell us your name, and a bit of your background—where you were born, your parents, things like that?

John Rogers [00:00:24] My name is John David Rogers, although I go only by John Rogers. This isn't promotion—I now have something called a K.C., which I now refer to myself as John Rogers, K.C. at the bat. But that's a lawyer joke. I was born in Victoria. My parents had left Manitoba due to allergies—for my dad—which had them leaving farms in Manitoba. Victoria turned out to be harsh on my mum's sinuses, so we relocated to Kamloops when I was four.

John Rogers [00:01:12] Kamloops was a great town to grow up in in a lot of ways. There were exceptions, which I can talk about later, but it was a town—a working person's town—logging, ranching, railway, sawmills. And it was a town without a great stretch of difference in wealth. People worked for a living. Most people had jobs. Again, I don't want to betray too pollyannaish a position. And you all went to a single high school. And that makes a big difference because some of the normal barriers break down. Now within that high school, it helped to be athletic. Wasn't a real positive thing to be smart. And cutesy was the passcode for girls. There were many who are athletes and many who are my friends. But it was a time, and many of them were, of course, very bright and often did well in school.

John Rogers [00:02:48] My dad was the local welfare officer, which didn't mean he was a social worker, but he would have the responsibilities of taking care of those who needed it within the town. He'd provide food vouchers and rent vouchers. But also, I spent time as a kid sitting with my dad in a car outside a woman's home, a woman with children, who was subject of what we now called domestic violence. And they had a threat of an aggressive partner. My dad also recognized that there was, on the west riverside of Kamloops, quite a large elderly Chinese male population who had worked on the railways, hadn't had families, hadn't been able to bring families. And he observed that they had to be of any age where they would be entitled to old age pension but weren't receiving it. So he worked to establish their right to that. And as a result, over the years we would have these men appear on our doorstep around Christmas time with some chocolates or ginger, which was one of my dad's favourites, in appreciation, which touched my dad.

John Rogers [00:04:17] There was a side of the job that he was exposed to the power within the city, which was exemplified by Bill [correction: Phil] Gaglardi. He had ran a church, more like a United States Southern Baptist church. It was evangelical church, definitely evangelical. And he would, he would help out his parishioners. In fact, the way that you got a job on the highways in the summer was to go to that church. And some of my friends went to work on doing the fencing on—it was Phil Gaglardi, right—Phil Gaglardi's ranch. Had nothing to do with highways, but had to do a lot with graft. But he had referred one of his parishioners to my dad for welfare assistance. My dad intervened and said she doesn't qualify. Phil phoned him up and my dad still said no. And Phil

threatened his job, and my parents—I can remember the tension within the house for a couple of weeks because they thought that would happen and it didn't. I think he probably recognized that dad would have had a lot of support in the community, but it was that type of town too.

Carmela Allevato [00:05:50] Now Phil, for people who might not know, Phil Gaglardi was the minister in Wacky [W.A.C.] Bennett's government.

John Rogers [00:05:58] He was the minister of highways who would regularly get speeding tickets. And his defense was, I was just testing the roads.

Carmela Allevato [00:06:07] So tell us more about Kamloops.

John Rogers [00:06:12] Well, I think I described that it was a working-class town. The one thing that was not known to us, or not realized, was what was going on across the river at the very large residential school. That was obvious. I mean, every day when I had breakfast, we could see it out the window of where we lived up on the hill. And there wasn't much mixing. There was a part of the town where the First Nations who had alcohol problems came across and would get drunk. And we know the reasons for that alcoholism. And it was considered by more progressive—different things were considered. My dad thought it was the consequence of being a culture being overwhelmed by a dominant culture, which was to some extent true, but not the whole story. Others, that First Nations didn't have a tolerance for alcohol. I mean, there was, of course, on the same side of the street, all kinds of drunk white people, but appeared not to have a tolerance for alcohol either. Just drank a lot.

John Rogers [00:07:33] But the experience I had was, I played basketball, so I was 14, and we played a team made up of boys from the residential school. And they came and played us and we played them—really, really even games. But what I noticed was their manner, it was so different from the smart-ass kids that I was part of, you know, with that confidence of a 14-year-old, there's seemingly confidence, but they were downcast. They would, in their eyes, they wouldn't—and that seemed odd, but I attributed it to a cultural trait, you know, and I don't think it is, having known a lot of First Nations, they're actually very exuberant and wonderful sense of humour. But when we played the games, everything dropped away. When they came on the court, that was gone. And they were smaller than us and faster than us. And so the games were even back and forth and really exciting. And we played across the river at the school. They had a gym, and we played in our side, and we were in a couple of tournaments. And the next year, when we got into the basketball season, we expected it to happen again. There was no team available from the residential school because at 15, every boy had left. They were legally allowed to leave. And that's the first thing they did when they turned 15 is they left. Now that always surprised me but with gaining some knowledge of why that happened and how it was inevitable—the realization that how little was being cared about how—they were there to be separated, not to receive an education. I don't think they received much of an education, and they couldn't wait to get away from, what to them, had been a horrific situation. And I thought also, and I had this discussion with this with someone from the residential school that's now a museum, that if that had happened at the high school and all the boys, when they turned 15 left, there would—

Carmela Allevato [00:10:07] The high school you went to.

John Rogers [00:10:08] The high school I went to. That wasn't really a high school across there, it wasn't pretending to be a high school—but there would be a royal commission, there'd be principals that'd be fired. It would be, What's going on? What's wrong? What's wrong with this town that this is happening? And it is—even though I had no awareness of it, I carry with me a sense of shame because of what was happening. And that wasn't it—you would have thought there would be someone who would be aware of it. I mean, we know the Department of Indian Affairs didn't care much. And the other side, I view with—just trying to describe the correct emotion because it's admiration. It's more about the changes that First Nation Secwepemc in this particular case—and my pronunciation may well be wrong, but I try—I grew up learning that it was Shuswap and that's not how their name (as with many others) is pronounced—is that they've accomplished it, and you see the powerful people and the accomplished people who are making the efforts, successful efforts, to right those wrongs as much as they can be made right.

Carmela Allevato [00:11:49] So, when you were growing up in Kamloops, did you work?

John Rogers [00:11:57] Yes. Well, I worked from when I could walk, but some ways, just in the garden or, you know, I mean, they weren't they weren't slave drivers, but they grew up on farms. My parents grew up on farms and when you grow up in a farm, a family farm in the prairies, one of your main reasons for your existence was to work on the farm, right? It wasn't a question. Kids, people did chores. But at 15, I got my first job working in a gas station, pumping gas and running the store. And I think it was 25 cents an hour. But it was money, my own. I didn't get allowances. The next year, though, I got a real job on the railway, in Oyama, which is a small town between Vernon and Kelowna. And I lived in a sectionman's house, which was not much bigger than this room, and had a wood stove, which I never ever cooked on—I mean, it was Oyama, it was like a hundred degrees—and a coal oil lamp for night. And the track right outside the door. And the first night I, I had the fright of my life because I woke up to a bright light shining headlong into my shack. And I found out the reason there's railway tracks is there's trains. And they came. It was coming around the corner. The positive was I had Woods Lake on one side and Kalamalka Lake on the other side of the small area.

Carmela Allevato [00:13:52] And did you work alone, were you there alone?

John Rogers [00:13:54] I worked alone. I worked with a guy who was probably 60 and worked on the tracks all his life. And my task was to mostly do what's called tamping the rails. You dig out under the ties and then shovel gravel in to make it flat, to make the train not go too much up and down. And he would start out and he showed me how to do it the first day, and he would start out on one side of the track and go down maybe 100 yards and sit down and have a smoke until I caught up with him because I could never do it as he—he just did it automatically, two or three shovels. I was jamming, and he expected me to work like a man. There was no—I wasn't being cut any slack. I worked a lot of other jobs. I also worked on the railway up at Red Pass Junction in the Rocky Mountains. And then I worked for BC Tel. This was a great job for a kid, a teenager. I was given an old truck, a credit card. And I was sent to do maintenance work on the various microwave sites that are set on top of mountains. So I'd get to drive up there and had truck of my own, four-wheel drive, also a credit card. And I went all over the province, the interior.

Carmela Allevato [00:15:44] These were summer jobs, right?

John Rogers [00:15:45] These were summer jobs.

Carmela Allevato [00:15:47] They were unionized jobs?

John Rogers [00:15:49] All of those were unionized. And then I first went at the end of high school. I hadn't been a very good student, but I hid in the—I locked myself in the basement for two weeks and crammed and wrote for scholarships and ended up in McGill for a year with the scholarship, failed miserably. I had been a lousy student in high school and I continued to be a lousy student. So I came back to B.C. and had to woo Brenda back.

Carmela Allevato [00:16:30] And, tell us about Brenda.

John Rogers [00:16:33] Okay. Well, Brenda, Brenda's parents and my parents knew each other before we knew each other, but we were in school, first in junior high school because she came from a suburb, if call it that in Kamloops, Valleyview, but we were in the same class. Those are the times when they put people in classes, like they would actually label them 8A, 8B, etc. and it was according supposedly by intelligence, which was a terrible way to run a school. But anyway, she didn't, as she acknowledges, much like my smartass style, but eventually the word passed around that she likes me, and do you like her? And we got together at a party and started—

Carmela Allevato [00:17:35] How old were you?

[00:17:37] —14 and as was the rules, you then started to neck and it was electric. It was chemistry from the beginning.

Carmela Allevato [00:17:46] And you've been together ever since.

John Rogers [00:17:48] We've been together ever since. The chemistry's still there. Surprisingly. Didn't ever—

Carmela Allevato [00:17:53] All right, so after high school, you went to McGill and then came back here?

John Rogers [00:18:00] Came back and went to SFU, which was definitely life changing. I had had—

Carmela Allevato [00:18:06] What year was that?

John Rogers [00:18:08] That would be '67.

Carmela Allevato [00:18:12] Heady days at SFU.

John Rogers [00:18:14] Heady days at SFU, heady days for youth. I mean, started out junior high school where the norms were Doris Day and Perry Como for music. And suddenly everything changed. The music changed, the music changed not just in the rhythms, but in the messages. I mean, there was, you know, the slogans of free love and, Are you going to San Francisco? And we used to have dances in the middle of winter in Kamloops based on California. We'd all arrive there in our beach shorts and sandals, walking through the snow. Youth is wonderful when you're here in it. Anyway, and then at Simon Fraser, we were exposed to radical thought, you know, that everything that you had been taught wasn't necessarily true. And there was a department called political science, anthropology and sociology, or PSA, sociology and anthropology, and it was full of radical

profs and soon full of radical students. And a lot of youth came to believe that we had the answers to everything, including elders who had been through a lot of upheaval and socialist revolutions, et cetera. There was actually a slogan which is—I mean, it's so stupid, it's hard to believe that we actually said it—that, Don't trust anybody over 30. And it was thought that youth had all the answers because the other people were all hidebound. I mean, there's an element of that around today, but it's—I get it, you know, I get it. And we were involved in all the causes. I mean, like we things like we liberated the faculty lounge. And it stayed liberated all the time I was there. We just came in and shooed all the profs out. And that was sort of what went on there, occupied the president's office from time to time. And then speeches on the mall. A lot of people were very, very good speakers, but almost none who had any practical experience in life. But if there's one that, I think, is typical—there was at first, there was strong opposition to marijuana and other drugs that were being used by the lefties, especially the ones out of what then was the Soviet style and they were, you know, it was basically opium is the opium of the people. You know, it's undermining the progressive cause. And then they use dope and then suddenly marijuana's something, part of the revolution. I mean, it's—

Carmela Allevato [00:22:01] And so did you work during those years?

John Rogers [00:22:04] I always worked. I worked as a matter of pride and independence. I paid my own way through university. Now, it was a lot easier in those days. You could make enough money to pay for your tuition, it wasn't high, and pay for rent when you shared with three or four other people. And so, a lot of people came down from Kamloops, especially to SFU, who wouldn't have gone to university otherwise, and who went on and achieved. Others found it wasn't for them and they left. But it was a debate. Now, the debate was narrow. I can remember just once in a class, a political science class, and one of the studies we did was on Sweden, and I thought when I read it, I thought well this makes a lot of sense. And so I said that in this class and they and the prof—this is a prof—says to me, well, that's just social democracy. And I feel shamed.

Carmela Allevato [00:23:21] As opposed to socialism or communism.

John Rogers [00:23:23] Yeah. Well, as opposed to the revolution, which we were apparently going to run, which is frightening to think that would be the case. Anyway, but it was an exhilarating time. It's good to free your mind of everything you've been taught. And I don't mean just at that time. Since then, I mean, you try and learn as you—you know, just to quote, Dylan, He who is not busy being born is busy dying. And that's how I view life. Anyway, then there was a strike at SFU. I was out anyway because we got married and I had to work.

John Rogers [00:24:17] But then—I had always wanted to travel. Brenda had wanted to get a career, so she could have a job that was fulfilling for her rather than always waiting tables and getting harassed. We were riding on the number 14 bus, which rode along Hastings from the—

Carmela Allevato [00:24:44] Still does.

John Rogers [00:24:46] Up to Kootenay Loop and then on into Burnaby, where we lived. And she said, well, let's go traveling. So we did. I worked for a year. Brenda started to work for a year, but kept getting fired for telling oppressive, paternalistic bosses, sexist bosses, to get lost in more graphic terms. And so she tried out for a while selling Georgia Straights outside the Hudson's Bay on downtown Vancouver, and then went back to

school for a term. Anyway, we left Vancouver with C\$1,400 and two one-way tickets to London and for four years, covering most of Western Europe, almost always hitchhiking, then from Turkey across Central Asia to India, into the Himalayas. Wonderful experiences seeing the high mountains.

John Rogers [00:25:53] And that was another curious place of people of that time, young people at that time. We would—dope was legal and it was very powerful hash. We weren't there to do that and we'd go out and I tried it once. It's just, like you were frozen. You couldn't, it wasn't thinking. It wasn't that sort of marijuana I'd had a few times in Vancouver where just all you did was giggle and then eat. But, we would go into the high mountains and it was amazing countryside with—you know, we got up to 10,000 feet on top of a hill and above us are 16,000 feet of mountains, Dhaulagiri and Annapurna. And anyway, we'd come back and see these people and they'd still be in the same room when we tell them, oh, it's just amazing. And they said, oh yeah, we have to do it. And that happened about three or four times, and we'd go out and come back and they never left.

John Rogers [00:26:52] Anyway, so we eventually made our way to Thailand and then hitchhiked from Bangkok to Singapore, which was a bit of an adventure, running out of money very quickly, and then arrived in Darwin, Australia and went to—

Carmela Allevato [00:27:13] Your microphone.

John Rogers [00:27:14] Oh, sorry. I'm covering it.

Carmela Allevato [00:27:18] And did you work in Australia?

John Rogers [00:27:19] Absolutely. We arrived with \$10, so we better work. And Brenda went to work at a equivalent of a grocery store, a large grocery store here. It was actually called Woolworths, but it was food. And I got a job working in a prawn processing plant where my job was to provide the prawns to the women who were doing the heading of the prawns. They'd opened up a big prawn-producing area. And if you think about Australia, there's like a big—somebody took a big bite out of the top. It's called the Gulf of Carpentaria. And that turned out to be very rich. And so they actually overfished it within about five years.

Carmela Allevato [00:28:04] You also worked in a tin mine?

John Rogers [00:28:06] That's later. But I worked at a post office in Sydney after—we would hitchhike 'til we ran out of money and travel. And then we were off to New Zealand. The tin mine was later when we came back, but New Zealand, we did a lot of hiking there, and then went to work. I was in the forestry and Brenda actually worked as a sheep-hoe, which means she worked with a sheep shearer whose job—her job was to get the sheep to move in to get sheared and take them out again. And, then we moved on up into Fiji, did some travelling. We were expected to—and our family expected us home the next Christmas. We decided we were not prepared. So we went another two years and back to Australia through the South Pacific and lots of adventures, and then up into Asia and back across, six months going up and down each side of India on third class trains, which is—I tell Indian people I know that we travel on third class trains, and they're surprised because they were pretty basic. And Brenda had applied for rehab medicine, which is physio and OT while we were in Delhi, and she got in and we were headed back to—we decided we'd go home, and my grandparents were having a 60th anniversary and so we headed for

that. And then I went to—Brenda enrolled in school right away when we got back and I went back to work as a labourer, which I did for two years.

Carmela Allevato [00:29:58] And then you ended up in law school.

John Rogers [00:30:00] Then I ended up in law school. I had no real plans of going to law school, and I wasn't ambitious in that way. At that time, I appreciated the life I had of eight hours a day going, do a good job, as I was always raised to be, and then ride my bike, read lots of books, do lots of hiking. Wasn't bad. You don't need a ton of money to have a full life.

Carmela Allevato [00:30:30] But why did you go to law school?

John Rogers [00:30:32] Well, partly because I saw what happened to labourers as they got older is they had physical problems that I didn't have at all. It was law school, but actually the practice of law, that caused me to have physical problems, various kinds and other ailments. But anyway, and a friend had applied. A friend from Simon Fraser had applied, and I didn't get in the year he applied, but I got in the next year and was—I was never a great law student because I was always arguing policy. And if you remember, Carmela, what you had to do was know the berries [basics]. You didn't care whether it was right or wrong, to succeed, you could—and it's actually the complete opposite of how you should be a lawyer. As a lawyer, you don't just give off a quick answer, looking at the facts and then say, oh, that's the answer. Anyway, but I did really well on policy courses. And between second and third year, I worked for the Union of BC Indian Chiefs and it was great work. And then I was offered, after I graduated, to work for a year for them on a royal commission into whether uranium mining would happen in B.C. And that was a wonderful experience, working first with First Nations in their communities, getting their views, work doing a type of community work, right.

John Rogers [00:32:15] And then I got a job after a year, I got a job with Baigent Jackson Blair as an article student and started there in—well, it wasn't Baigent Jackson Blair. Actually, that happened later. Baigent Jackson, was a strong union-side firm. There weren't that many of them in those days. And John Baigent especially had the philosophy that unions—I mean, he was very committed to unions. He insisted that you do as many hours as necessary to present appropriate argument for whatever the case was. If it was a minor case, you put in lots of hours. You didn't get to bill it. I mean, you bill it because both of them considered billing to be an art. So they would just think this is the appropriate rate. But they insisted on doing good work, and it was—I mean, it was exactly the sort of people I wanted to work for. I mean, I can't think of doing anything else. I thought at one time environmental law, but that was—I did some environmental law work. But there was about two places you could get a job working for the environment and lots of places you could get jobs working against the environment, helping companies to get around the environmental laws. And also they were, you know, you were underfunded.

John Rogers [00:34:19] And so I was very quickly thrown into doing cases. So I had hands-on experience. And the first hands-on experience I had—it was the first case I went along with John Baigent to do. There had been a massive strike in—I think it's 1980. All of those various markers sort of blurred for me. I was looking at Rod Mickleburgh's book on the union movement and realized, well, I have been around for a while because a great many of them had—not the very early ones but not far into the book—I was participating—the farm workers, you know, Operation Solidarity. But there was a large strike with the health, the municipal workers, and the BCGEU, not coordinated, just that they were out.

And so at those days you could, civil [civic] workers and the GEU could picket anywhere where they had somebody who worked at any time. So GEU, for example, if they had scalers, they could picket down any sawmill. Building inspectors, they could show up and picket all of those locations. And so there'd be then an application to restrict, make sure the struck work wasn't being done. But I showed up with John, and there was literally, we had about probably 20 file applications and—some GEU, some civic workers. And then they announced that they were going to hold the GEU in another room. They were splitting it up—this is the Labour Relations Board, yes. And so John got up, handed me the files that were the civic worker files, and said, well, you do these ones. So, I tell that story to young associates now, and that's not something they desire to do.

John Rogers [00:36:40] But I've always found, even though I can get anxious about a case beforehand, that once I'm in it, I'm not intimidated. And so I did okay, didn't screw up anything badly, and then started from then on. It was an onerous job because I had a caseload of arbitrations and board hearings. And then I was also the junior lawyer for the senior partners. We were, it was good associates, they had Catherine Wedge—who's now a judge—and John Hodgins, and we ended up (after John and Marguerite Jackson—John Baigent and Marguerite Jackson—moved to the interior), forming an office. We had the idea we'd no longer name it after people, which was quite controversial at that time. And we seized on Victory Square Law Office because our offices were right by Victory Square, which is full of union history. And the building was too. I still have the desk that belonged to John Berger at one point in my office—

Carmela Allevato [00:37:50] Tom Berger.

[00:37:51] Tom Berger. Did I say John?

Carmela Allevato [00:37:55] So tell me about politics at work. Like what is politics that you were involved in, in your work? How was politics involved?

John Rogers [00:38:07] Well, politics. There's two different things. There's the politics of unions, which you definitely should stay out of as much as you can. And I mean that politics in the controversies that go on and the struggles that go on within unions—people have different perspectives. But the politics, we've always been supporters, as a firm, of workers beyond just representing them. So, we're supporters of the NDP as individuals and as a firm. We are involved in various activities. At times, there's more I wish I could have done because when you were working 60 hours plus and trying to raise a family, I wasn't involved as much as I was beforehand. Like, I didn't get involved in campaigns very much. The political campaigns outside I'd support.

Carmela Allevato [00:39:22] Through your work, how does being a union advocate, how is that a political act?

John Rogers [00:39:30] Oh, it's a political act in that the unions are struggling to achieve certain gains and you can help them to do that, and it's only ever helping. You don't go in and tell unions, this is what you need to do. In my view. I tell them, this is what's available. But it's your choice. You people are going to live the consequences of this. Now, unions almost invariably take on the cause, right? Money can sometimes be a difference, but generally they'll take it on. And so they have—they've taken on cases that we were told we had no chance of succeeding, and we've succeeded. Nothing more pleasing than being told by the lawyers on the other side, you don't have a case, which is really stupid if you're a lawyer, it's really stupid. And I still have had it recently, you don't ever say you don't have

a case because if in fact, you win, where was their judgment? How did they lose the case that the union couldn't win?

Carmela Allevato [00:40:53] So John you told us about your early case, the VMREU [Vancouver Municipal and Regional Employee's Union] case. What other cases stand out for you through your career?

John Rogers [00:41:01] Well, the ones probably that I'm best known for—although there's two categories. I spent a lot of my career attacking presumptions that were available to employers that had no foundation in law, like, you know, presumptions about management rights and presumptions—when I first started that if there was a selection case, the only role that it was determined that the union had was to demonstrate that it had been unfair or discriminatory in the selection. And there was clauses in the collective agreement that said how you had to judge it and you don't get to do that. And so I had success in eroding a lot of them, including one about the onus on unions in establishing that management rights were infiltrated and that's now accepted. Although I still see some lawyers, company lawyers, arguing it, but there is no onus, it's persuasion. It's not an onus of proof. It's an onus of persuasion. What does the language say? And so that was important but minor to others except for lawyers.

John Rogers [00:42:20] But then I was involved in the Charter fairly early on, using the Charter with teachers on freedom of expression at that time, in response to the legislation that eliminated teachers' rights in collective bargaining regarding matters like class size and many other issues, and eliminated the clauses that teachers were engaging in distributing material and talking with parents when they came to parent-teacher nights. And the board banned that and punished, and so I took it on as a Charter case, which was one of the first, I think. And we succeeded, succeeded that that was a free speech issue. It was protected by the Charter. The employer had to show that it was, as the test is in the Constitution, that the prohibition on it was justified in a free and democratic society, which seemed to me, just to say that, it's uphill. I mean it's uphill for the employer to make, but surprisingly, it's not always the case. But we were successful on that up to including the Court of Appeal of B.C. But the biggest one I did was the—and Carmela, you know about this case a lot because you were at the—when the legislation was first passed in 2000, it attacked in particular health care workers with a special target for HEU.

Carmela Allevato [00:44:16] That was Bill 29. January 29th, 2002, is when it was public.

John Rogers [00:44:20] Yes. After Campbell had said, I don't believe in tearing up contracts, went and tore them up. And the other target was teachers.

Carmela Allevato [00:44:29] Yes.

[00:44:29] Who had their rights to bargain a lot of fundamental issues taken away and collective agreements torn up. And there was a meet— (Carmela wasn't actually involved with this in retaining Joe Arvey on behalf of HEU. Joe Arvey was another brilliant lawyer and now unfortunately passed) and there was a meeting held and he said—

Carmela Allevato [00:45:04] Well, the meeting had union leaders as well as union lawyers.

John Rogers [00:45:08] Oh, no. Definitely the union leaders from all of the major unions that had been affected. Probably all of them. And I was there. And many others. And Joe

said, look, you're going to—because there were three decisions of the Supreme Court of Canada that said collective bargaining were not rights that were protected by freedom of association, which seems, you know, certainly contrary to—it's an association. But they had an odd analysis. It had to be, if you, something about if you could do it as an individual, then it wasn't protected.

Carmela Allevato [00:45:56] That's right.

John Rogers [00:45:56] Anyway, Joe said, you're going to lose it in the first two levels because they're bound by these decisions, so no choice. But when it hit the Supreme Court of Canada and it was successful. They were hit hard by the government in terms of implementing it, as I recall. The unions made some concessions. But it still, it was a powerful case and it's a case where to read it was—the Supreme Court of Canada said everything I believed about unions, but no one had said—there was somebody who had worked in my office and then went to the labour board, and I heard he described me as a true believer. But the believer was that unions are progressive forces in society, in countering power. Anyway, so that was successful. But we had filed, even though the BCTF didn't take on its own case, they participated in the hearing.

Carmela Allevato [00:47:06] In the health care one.

John Rogers [00:47:07] In the health care one, but as the BCTF, just as an interested party and John Baigent was on that. Anyway, we proceeded with that decision, on behalf of the BCTF and we were successful at the first round before Justice Griffith [edit: Griffin], and she ordered—there was a practice by the Supreme Court of Canada delaying implementation for a period of time to allow the government to address the case. Well, the government, all they did was come and talk to the teachers and say, well, what do you think about this? Well, we think the same thing we thought before, that it's wrong. And then they passed the same legislation again, passed the same unconstitutional—and I just, I couldn't believe it. But then, they were determined that they were justified in doing that. That was all that was required that you come and talk.

John Rogers [00:48:13] It's somewhat similar to the fact that with First Nations, consultation was met, you just asked them, what do you think? And you don't have to—meaningful consultation. So they passed it again. We went through it again. The judge not only found that it was unconstitutional still, but found they had bargained in bad faith, which was a shock to them. And that went then up to the Court of Appeal, which had a five person bench, which is the panel that hears the case. And they were—they were definitely negative about that they believed there should be government's role and they did something, the majority, that you're not permitted to do. They've reversed your findings of fact. One of the most prominent was, she'd said they'd bargained in bad faith, and they pointed to the fact that the person I cross-examined had said, you know, we came prepared to bargain in good faith. And yet you can't change the facts of the trial judge unless it's called palpable error. And this was no palpable error, it was true. And so, when we got to the Supreme Court of Canada, which is, you know, a place not all lawyers get to go. And I was up first, and Justice McLaughlin was the chief justice. And I started into the background, the history of it. And she paused and said, "Mr. Rogers, what is it your client wants?" And so I'm, you know, one of the things as a lawyer, you have to act on your feet. I don't have the luxury of going back to these presidents in the back and say, what is it you really want? You know, so I had to make a call, and the call was the restoration of bargaining rights and the return of the collective agreements. There was other things—they wanted a whole bunch of money. But I knew if we put a ton of money on, money

wasn't the main objective. But if we put that on the table, we were going to have a long case. Anyway, that's what was my take. But I'm making this call on my own. And so then we moved on and had the whole case, and we argued, the government and other parties argued. We replied. And, then normally the judge, the bench, goes off and makes their decision and issues—

Carmela Allevato [00:51:00] Over a long period.

John Rogers [00:51:01] Yeah six months or more, sometimes a couple of years, but I expected with this one to be about six months. So I'm packing up my briefcase with all the material we have, and I look over and there is a signboard with an electronic message said "Please remain. The justices will return" in I think they said a half hour, or maybe it was an hour, and I thought they just had more questions. And I said to someone, another lawyer, is that what's going to happen? They said, no, I don't think so. And they don't normally do that. So they arrive back and they gave a judgment. They gave a judgment striking down the legislation, restoring the collective agreement. And because this had been such a long case and so tough, I remember when they brought the legislation in, there was so many teachers, leaders who'd been presidents or activists, and they were in tears, I mean, literally in tears because they had worked their whole life to get these protections for class size, which they considered to be in the interests of kids, right? And all of the presidents for about the last 12 years, I think it was, were there in Ottawa just to hear it being presented. But they didn't expect to get the decision right then. So there was a lot of euphoria and a lot of, you know, good feeling. With me, for me, but especially for teachers.

Carmela Allevato [00:52:43] And what happened after that? The court said that they'd get their language back.

John Rogers [00:52:50] Well, the language was back. And I haven't been involved in this part at all, although Steven Rogers has been. They had to figure out, how do you put this language back? There's been 12 years of educational differences. So, for example, for kids who need assistance, there was categories. Those categories didn't exist anymore. And so Marguerite Jackson, I think actually heard most of it and they worked their way through how to transfer what would have happened in collective bargaining over the 12 years, happened now. And I think there's some of them are still going on.

Carmela Allevato [00:53:28] You've been around the labour movement for several decades. Can you give your perspective on how the practice of labour law has changed?

John Rogers [00:53:41] Well, it's become, as in a lot of it, there's a lot more technology involved in the practice of law, which I'm not good at and have to succeed despite it. I do, by the way, consider it to be a downside in that you tend to get only certain cases looked at as authorities. Because there's, you know, there's Brown and Beatty, but there's now also, you enter a code word and then you get cases. And so everybody has the same cases. And there's more than that. And the one thing I have now as a significant role is that I have a memory for cases, because the time I put in them and I remember cases and I can say to juniors or even not so junior, that here there's this case from such and such. And we used to keep them all in binders. Now I can sometimes—those binders have been put aside because they take up space. So that's practice.

John Rogers [00:54:52] The practice has changed for the better, for associates and even other partners, our partners in the firm, senior lawyers, in that it's no longer accepted the way it was for within my firm that you could have a work-life balance, but the balance was

work first and life after. An example was that there was a lawyer I worked with, Art Pape. We both had young, children, very young children. And we offered to, say one of us will come in both days, one weekend, and the other will come in both days the next weekend. And that was turned down. You were expected to be there when you were needed. And those times there was a lot of urgent applications. Still is some where you just had to be there. Yeah, there was a union at a pulp mill up at Port Alice, and they would have a shutdown that shut down the sawmill, I mean, a pulp mill before—which was highly unusual and doesn't exist anymore—over the Christmas holiday. And because they were in Port Alice, they'd just regularly walk a couple of days early to get to get a start. They had to come all the way from Port Alice, which is the far end of Vancouver Island. And it happened almost every Christmas. And so, as a junior lawyer, you'd get the application to get a cease and desist on the strike activity. And so, I'd often be the one, and one or the other of two presidents who were both engaged in this would come down to Vancouver to defend it and they'd say, and they'd learned to say, when I asked them, well, the union been involved in and they originally said yes, but then they said, no, no, they haven't. And so we had a guy, I know his name, but I won't repeat it. But he—I'll just use his first name, Charlie. You know, I've looked at the material here, and you say you're not involved at all. And they say you were, and they've presented this evidence. And he says, well, what kind of evidence? I said, well, when you phoned down to the control room—and pulp mills run on control rooms to shut things down, they're very highly industrialized operations—the foreman was standing next to him when you phone down and said, why the hell isn't the port control room down? But people got their start anyway.

John Rogers [00:57:46] Then it became very expensive to do those things because employers started to sue for the losses. And one case I was involved in was one where at Powell River, they shut down for 14 days over contracting out and the damages were \$8 million. And I managed through various arguments to reduce that. The 8 million were the actual costs—that was accepted—to reduce it to 4 million. And they didn't think I was such a great lawyer. They'd look more at the 4 million that was left over rather than the one I had eliminated. But it turned out we had a good arbitrator, Monroe, who brought people back and said he was going to impose it but worked because we had reached a deal earlier with the president and went to the membership. And there's still the membership, who are a chunk of it, who said, we're not going to accept this and we'll, you know, we'll sleep under bridges, sort of thing. And I said, I was asked to say, well, this is what the law is. You can also be fined your own—you can find your own property, but for sure, the union hall, et cetera, your dues, they'll just collect the union dues. But in that first round, when we met, there was a motion to say, well, who's this guy? And they voted me out of the union meeting, so they didn't want to hear good advice or any advice from somebody. But then, cooler heads, after we came back, and the company gave a little bit more, but the union still had to pay quite a bit. So now, one of my jobs is, when people are out, is to tell them, these are the consequences that are potential.

Carmela Allevato [00:59:47] And what about the labour movement? What have you observed in terms of how unions have changed in both their makeup and their operations over that period?

John Rogers [00:59:57] Well, the biggest difference in my own personal practice was the amalgamation of so many unions and others disappearing. I mean, I worked, you know, I worked for bakers union, I worked for the garment workers. And there were all these specialized crafts, and many of which had come out of guilds, but they were just too small and their industries were changing. I mean, the garment workers in Vancouver once had a really active business down in downtown Vancouver around the Dominion building area.

And that's, I think, almost all gone. There's probably some—I don't think there's any unionized garment workers, maybe some small shops that make dresses. And so with the large unions amalgamating, they have a lot more clout, both political and, and in terms of finances, they can finance large cases, expensive cases. And that's always—some of the unions have lost something. They've lost some of their local power. For example, the IWA ceased to exist. The IWA was the biggest union in British Columbia for a long time and the most powerful. And it's now part of the Steelworkers.

Carmela Allevato [01:01:27] What about the role of women both in union and in labour law?

John Rogers [01:01:32] The role of women is—when I started, there were some women in labour law. The attitude towards them was often discriminatory. Not so much on the union side, but employers—they just didn't get the same cases. There had been some who'd come up like—there's Madam Justice Southin who had come up actually as a labour lawyer and arbitrator, she was my bencher and then I had her as an arbitrator. But she became a very prominent judge in the Court of Appeal. But she succeeded by adopting the mannerisms, the tough mannerisms, of the toughest male lawyers. She was alone, she and one other judge. But it was still for—there was a lot of the societal change that were going on—Catherine Wedge, she appeared before a judge and he asked her—when you introduce the lawyer and she was with John Baigent and you say your name. And she said, you know, Wedge, Catherine. And he said, is that, Mrs. Miss? And she said, Well, it's Ms. And he said—and this judge was a good judge—but, you know, of a certain era. He said, I don't recognize that word in my courtroom, and she said, Well, you can just call me Wedge then. And she stood up. And he delighted in that, and throughout he called her Wedge. And, you know, judges are quite often, except when you stand up to them, they may try and push you around a bit. And that's there's an interesting difference in—and nowadays, when you appear in a courtroom, you're asked what your pronouns are. And I always have—it's not that I'm opposed at all, I understand the reasons and everything, but I can't ever remember what my pronouns are because they don't really mean, what are my pronouns. I can say the other day I was asked, and I'm thinking "I" because it's not my pronouns, it's what somebody else will—

Carmela Allevato [01:04:04] What pronouns should we use when we refer to you?

John Rogers [01:04:06] Yes. But the other thing that was more significant, I was with a lawyer, and she wanted Mx.

Carmela Allevato [01:04:20] Yes.

John Rogers [01:04:20] Right?

Carmela Allevato [01:04:22] That's right.

John Rogers [01:04:22] Not "she" by the way. I fucked up there, too.

Carmela Allevato [01:04:28] But in terms of the role of women in unions, what have you observed?

John Rogers [01:04:34] Oh. Hugely different. I mean, not only were there unions where women had just subordinate roles. But now there's a great many unions which are dominated by women and not just ones like the nurses where it was to be expected, the

membership was almost all women, although that's changed a lot. There's now a lot of—I was the first time ever in the hospital, and half of the nurses I had were male. But even in the trades, when I, you know, early on, there was some women who were attempting to get into trades, but faced really nasty opposition. But now they're prominent firefighters as women, police, of course, many police are women, and they are not just working in the profession or trade whatever that they're employed in, they're prominent in the leadership. And I think almost all of the big unions have had a female president now.

Carmela Allevato [01:06:01] So, John, why do you think it's important for young people—and in particular asking you as a lawyer—young lawyers to know about the history of labour?

John Rogers [01:06:17] Well, you have to know the history of labour to understand why labours exist but what's needed for them to continue to exist. They're always vulnerable as long as we have—which we do have and I think continue will continue to have while I'm still around—a society where capitalism has such power, the forces of employer, the ability of employers, to control the workplace. So if you don't understand that, you think that what you're doing is—and I think this is for young workers, young lawyers, that it's a given, and it's never a given. It is a given in some societies and it's increasingly becoming so in ours. But it's always under attack. You know, and the thing about the Constitution is governments have now showing a willingness to use the notwithstanding. So you can have constitutional rights and they're of no effect. And I know there was a lawyer and again, someone I know well who it is, who from the employer's side who said, well, why don't they just use the notwithstanding clause? That's what it's there for. I'm thinking, geez, I hope you're not giving them advice, but because it seems, I know why they had it, but to accept it is something you use all the time in minor, minor things like the redevelopment that they were going to do in Ontario or some educational issue. You don't take away those Charter rights just for that, but it's now becoming acceptable for governments to do it. And so there's that and for younger lawyers but younger workers, the appreciation of what has gone on before. You know, we all in the union movement or generally in society, we stand on the shoulders of others. And if you're not aware of that, you're not aware of your history or why unions exist.

Carmela Allevato [01:08:49] Thank you so much, John. That's a really good point to end.