Sopinka, Lederman & Bryant

The Law of Evidence in Canada

FIFTH EDITION

Student Edition

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importantly in the rule against leading questions. The content of the examination-in-chief is controlled by the issues in the case as set out in the pleadings, as well as by the rules of evidence governing admissibility. The latter are dealt with elsewhere in this work.

B. Leading Questions

1. Reasons for the Rule

§16.54 Of all the rules of evidence, perhaps the best known, and yet most often breached, is that a party calling a witness ought not to ask leading questions.

§16.55 The following are the reasons most commonly cited for the existence of the rule:[92]

(1) The bias of the witness in favour of the examiner;
(2) The advantage the examiner has over his or her adversary in knowing what the witness' evidence is. This creates a danger that leading questions will only bring out what is helpful to the party calling the witness, rather than a balanced version of the witness' knowledge;
(3) The propensity of a witness to assent readily to suggestions put to him or her by the party calling the witness.

2. Form of Leading Questions

§16.56 The most common form of leading question is one which suggests the answer. For example, in an action to set aside the transfer by the deceased on the grounds of his incapacity, the following question was held to be leading: "Did you observe a gradual failing of the mind?"[93] Even more objectionable is a question which invites a witness to corroborate the evidence of another witness or which sees the witness' assent to the contents of a document.[94] A question that permits a witness to choose between two possible scenarios and that does not suggest an answer is not a leading question.[95]

§16.57 Another equally objectionable form of leading question (although often unrecognized as such) is one which assumes a fact or a state of facts which is in dispute. Accordingly, in a case in which a witness' presence at the scene of an

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92 *Maves v. Grand Trunk Pacific Rly. Co.* (1913), 14 D.L.R. 70, [1913] A.J. No. 53 (Alta. S.C.); *Connor v. Brant (Township)* (1914), 31 O.L.R. 274, at 285, [1914] O.J. No. 31 (Ont. C.A.).

93 *Bradshaw v. Baptist Foreign Mission* (1896), 1 N.B. Eq. 346 (S.C.).

94 *R. v. Legge* (1936), 11 M.P.R. 144 (N.S.C.A.).

95 *R. v. W. (E.M.)*, 2011 SCC 31, [2011] 2 S.C.R. 542, [2011] S.C.J. No. 31, at para. 9 (S.C.C.).