

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20060725
Docket: X063590-2
Registry: New Westminster

Regina

v.

**Juel Ross Stanton, Norman Clay Stanton, Damon Bartolomeo,
Jeffrey Michael Douglas**

Ban on Publication
Before: The Honourable Mr. Justice Stewart

Oral Ruling Re Leading Questions

July 25, 2006

Counsel for the Crown	Wendy E. Dawson, Q.C. Craig Giles
Counsel for the Accused Juel Ross Stanton	J. Brian Jackson, Q.C.
Counsel for the Accused Norman Clay Stanton	Jeffrey Ray
Counsel for the Accused Damon Bartolomeo	Thomas B. Doust
Counsel for the Accused Jeffrey Michael Douglas	R. Alexander Ross
Place of Trial/Hearing:	New Westminster, B.C.

COPY

[1] THE COURT: (Oral) These are going to be the rules of the game as far as leading goes. Leading is not what it is generally thought to be, and secondly, when it is what it is thought to be, it operates in a different way than it does every day in courtrooms throughout this province. These will be the rules with respect to leading:

- 1) A leading question is a question that suggests to a witness the specific answer that the examiner wishes the witness to give or which assumes a fact not stated by the witness earlier (*Wigmore*, Volume 3, pp. 155 and 162; article, *Criminal Law Quarterly*, Volume 6, page 22).
- 2) Counsel should lead the witness with respect to introductory matters (*Ewaschuk*: 162230).
- 3) With respect to matters that are not introductory in nature, counsel should not lead the witness (*Ewaschuk*: 162230).
- 4) It is not improper to take the mind of a witness to the subject on which testimony is desired (*Maves v. The Grand Trunk Pacific*, 14 D.L.R. 70, at 74).

- 5) It is permissible to lead in the following areas:
- a) For the purpose of having the witness identify a person or thing (*Maves v. The Grand Trunk Pacific*, 14 D.L.R. 70, at 75);
 - b) For the purpose of proving a s. 11 oral statement by an earlier witness (*Maves v. The Grand Trunk Pacific*, 14 D.L.R. 70, at 75);
 - c) Where counsel has tried to get the evidence with non-leading questions and it is obvious that the witness's memory fails the witness temporarily (*Maves v. The Grand Trunk Pacific*, 14 D.L.R. 70, at 75; *Wigmore*, Volume 3, p. 169);
 - d) Leading questions are required by the complicated nature of the matter (*Maves v. The Grand Trunk Pacific*, 14 D.L.R. 70, at 75);
 - e) Where the witness simply does not understand, or is a child, or is one who

has difficulty with the language or is ill. (*Wigmore*, Volume 3, p. 170);

f) With the permission of the court, where necessary in the interests of justice that leading occur, leading will occur.

(*Wigmore*, Volume 3, p. 157; *Coffin* 114 C.C.C. 23 S.C.C.);

6) If a witness is relating a conversation and, in the mind of counsel, the witness seems to leave something out, counsel may ask him to repeat his evidence. If, at that point, counsel still feels something has been left out, he can suggest the missing subject matter. If that fails to bring out the evidence counsel desires, he may then put a question which is truly leading in nature, that is to say, contains the omitted bit of evidence. (*Maves v. The Grand Trunk Pacific*, 14 D.L.R. 70, at 77).

7) Leading goes only to the weight of the evidence in any event. As to this, see, amongst other things, there is an article in 68 C.R. (3d) at 333; *Moor v. Moor*, [1954] 2 All E.R. 458;

(1954) 1 W.L.R. 972; another article of interest at 52 C.B.R. 212).

[2] This is the first time in this case that the question of leading has come up. And it has come up in the context of the evidence of a witness I have now sat and listened to for more than half a day. It is obvious that, with respect to this witness, a number of those subsections that I just indicated apply. They apply at different times and in different ways. With respect to the specific point in question, there is nothing objectionable in counsel -- having asked the question that so obviously in the courtroom stupefied the witness -- to take the witness's mind, for example, to somebody that he saw outside, and see if that triggers the answer. And then counsel can get more specific. This is not objectionable.

[3] Objection overruled. Go ahead.

Stewart J

The Honourable Mr. Justice Stewart