

Losing Your Case With Your Own Evidence - More On Effective Cross Examinations

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One of the most powerful tools a trial lawyer has is cross-examination. In cross examination a lawyer can pose leading questions forcing a witness to agree or disagree and in doing so the lawyer seeks to get admissions that help his client's case or hurt his opponent's case.

In pre-trial examinations for discovery a lawyer has the right to 'cross-examine' the opposing party. By that I mean a lawyer is permitted to control the examination with leading questions. If done effectively damage can be done to the your opponents case. Reasons for judgement were released today by the BC Supreme Court, Victoria Registry, demonstrating the results of a persuasive cross examination.

In today's case ([Mann v. Rainsford](#)) the Plaintiff was injured while viewing a neighbour's open house. As the Plaintiff was leaving the house she mis-stepped on a concrete slap (basically a step) along a pathway from the home to the sidewalk. Having mis-stepped the Plaintiff fell and was injured. She sued the home-owner claiming that this concrete slab was a hazard and that steps should have been taken to guard against this injury.

Mr. Justice Wilson of the BC Supreme Court disagreed and dismissed the Plaintiff's lawsuit. The Court noted that the Plaintiff's injuries "*were caused solely by her own inattention*". The Court reached this decision largely by the Plaintiff's own evidence which was given at examination for discovery. The Plaintiff's evidence clearly had a damaging impact on her case and the discovery exchange is worth reviewing for anyone learning about cross examination in personal injury lawsuits. The damaging cross examination was as follows:

[29] The plaintiff explained the mechanics of the incident, at her examination for discovery, as follows:

92 Q Tell me what you did when you left the house.

A I walked out of the front door and I stepped down the first step. And I remember I was looking at the garden. And I tripped. And I went to grab the handrail, but there was no handrail there and I fell forward down the step.

...

96 Q You said you were looking at the garden?

A Mm-hmm, yes.

97 Q Which area of the garden were you looking at?

A On the left-hand side coming out.

98 Q So the right-hand side of the photograph, you were looking over that way?

A Yes.

...

100 Q You didn't slip on anything, is that right?

A No.

101 Q *And you didn't trip on anything, did you?*

A *No, there was no object there.*

102 Q *You misstepped, is that right?*

A *Yes.*

...

128 Q *So you stepped off the landing onto –*

A *The step, yes.*

129 Q *— down the first step, and you did that fine.*

A *Yes.*

130 Q *So you got down onto, say, the second landing?*

A *Yes.*

131 Q *And then you went forward?*

A *Yes.*

132 Q *And then what happened?*

A *I tripped on that step, as far as I can remember.*

133 Q *So you were looking at the garden to the left?*

A *Yes.*

...

137 Q *Why did you fall? Do you know why you fell?*

A *It wasn't a normal configuration of steps going down, so I missed it.*

138 Q *You just went up it 30 minutes earlier.*

A *That's correct.*

139 Q *So you knew that there was a step and a landing and another step and a landing from when you just went up 30 minutes earlier, right?*

A *I saw it as I went up, but I wasn't looking at the stairs as I came down, because I don't normally have to look and check to see where the steps are when you're going down.*

140 Q You knew that this isn't a staircase like at your house. You knew that when you got there and you knew that when you went to go up into the house, right?

A I saw it when I went up.

141 Q So you knew that there were landings in between the steps and that you would have to walk to get to the next step, right?

A Yes.

142 Q I'm just trying to find out what was surprising to you that it was the same on the way out as it was on the way in.

A I guess I hadn't recalled the configuration when I left.

...

144 Q So it was the same on the way out as it was on the way in?

A Yes.

145 Q It was simply just that you misstepped when you left the house, isn't that right?

A That's correct, yes.

When preparing for discovery or trial you need to know that the defence lawyer will try to harm your case and must be prepared for a leading cross examination. If not, you risk causing significant and possibly preventable damage to your claim.