

What is the Collateral Fact Rule?

Brian Sunohara
January 2020

The collateral fact rule is often misunderstood. As indicated by the Ontario Court of Appeal in *R. v. A.C.*, 2018 ONCA 333, the collateral fact rule has “historically suffered from confusion in its application”.

In *R. v. A.C.*, the Court of Appeal noted that the collateral fact rule operates to prevent a party from calling extrinsic contradictory evidence solely to undermine the credibility of an opposing party’s witness in relation to a collateral issue.

The extrinsic evidence must be relevant to some issue in the case other than merely to contradict the witness, as stated by the Court of Appeal in *R. v. G.P.*, [1996] O.J. No. 4286 (C.A.).

The rule is based in trial efficiency and seeks to avoid confusing the jury and wasting time with the sub-litigation of non-essential issues.

For example, in a motor vehicle accident case, if a plaintiff testifies that the tires on her car were changed one year prior the accident, the defendant would not likely be permitted to call evidence from a mechanic showing that the tires were, in fact, changed two years prior to the accident, if liability for the accident had been admitted by the defendant. The timing of when the tires were changed would be a collateral issue.

As another example, in a sexual assault case, the Court of Appeal in *R. v. J.H.*, 2013 ONCA 693, held that evidence of whether the complainant had ever made or encouraged a false motor vehicle accident report on some other occasion was relevant only to her credibility as a witness at trial and, therefore, was inadmissible due to the collateral fact rule.

However, as stated by the Court of Appeal in *Landmark Vehicle Leasing Corporation v. Mister Twister Inc.*, 2015 ONCA 545, cross-examination on a collateral matter does not trigger the collateral fact rule.

The Court of Appeal indicated that counsel is entitled to challenge a witness's credibility in cross-examination. This includes putting documents on a collateral issue to a witness during cross-examination for the purpose of impeachment. The scope of the cross-examination is limited by the requirements of relevance and other rules applicable to cross-examination. For example, counsel cannot be abusive to the witness or overly repetitive. However, the collateral fact rule does not apply.

In [*R. v. MacIsaac*](#), 2017 ONCA 172, the Court of Appeal stated that "if the questioner asks a question that bears on a collateral issue, he or she is 'stuck' with the answer, in the sense of not being permitted to lead extrinsic evidence to contradict it. However, this does not prevent proper questions from being put in the first place".

In addition, in determining whether the collateral fact rule applies, the court must examine whether the proposed evidence actually relates to a collateral issue. In [*R. v. Aalders*](#), [1993] 2 SCR 482, the Supreme Court of Canada said that, although a party cannot put in reply evidence on a purely collateral issue, "it is fit and proper that reply evidence be called which relates to an integral and essential issue of the case".

In [*R. v. R.\(D.\)*](#), [1996] 2 SCR 291, the Supreme Court indicated that evidence which undermines a witness's credibility may escape the exclusionary reach of the collateral fact rule if credibility is central to the case.

In summary, the collateral fact rule does not regulate the cross-examination of an opposing witness. Rather, it governs the ability of the cross-examiner to introduce extrinsic evidence in his or her case to contradict answers given by an opposing witness on a collateral issue. Further, the collateral fact rule is not absolute. An issue is not collateral if it is integral and essential to the case.