

R v Stanley: Error of Law?

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INTRODUCTION

Following the acquittal of Gerald Stanley, there were several calls for an appeal from the victims' family, lawyers, legal experts and First Nations communities across Canada. Those calls were rejected by Saskatchewan's Assistant Deputy Attorney General Anthony Gerein.

Colten Boushie was 22 years old and from the Red Pheasant First Nation, when was shot and killed on the farm of Gerald Stanley, near Biggar, SK on August 9th, 2016. Stanley, a Caucasian farmer, was charged with second-degree murder and manslaughter. He was acquitted by a jury on February 9th, 2018.

The heavy onus to overturn a jury's verdict of acquittal falls upon the Crown and this can only be accomplished by appealing an error of law. (*R. v. Graveline*)

Were there errors of law in R v Stanley? Did the Crown contribute to these errors of law? Should there have been an appeal?

This research paper will also reflect and briefly examine my personal perspective on the events surrounding the death of Colten Boushie and my experience as a First Nations national news journalist who covered the case and attended the proceedings of *R v Stanley*.

BOUSHIE FAMILY LEGAL TEAM



The Honourable Donald Morgan, Q.C.
Minister of Justice and Attorney General



GROUND FORS FOR APPEAL – ERROR OF LAW?

1. Evidence Admissibility

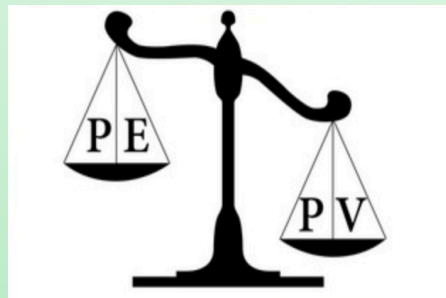
- Expert Witness vs Layman Witness
- Testimony of Wayne Popowich
- Testimony of Voinorosky

“The Trial Judge had an obligation to keep irrelevant and prejudicial evidence away from the jury. In that regard, and with respect, the Trial Judge failed.”

- Lawyers Chris Murphy & Eleanore Sunchild

R v Seaboyer – The Threshold Test

The trial judge has the power to exclude evidence on the basis that its probative value is outweighed by the prejudicial effect.



2. Trial Judges' Charge to the Jury

“Admission of lay evidence about hang fires and the judge's failure to warn about or differentiate the law witness' testimony about hang fires from the testimony of qualified experts were legal errors that could be appealed.”

David Tanovich (Roach's text) pg.190

CROWN PROSECUTION CONTRIBUTIONS

Did the actions (or lack of action) of the Crown contribute to the acquittal?

Did the actions (or lack of action) of the Crown contribute to the challenges of appeal?

- Jury Selection
 - Under-representation of Indigenous people on the jury
 - *R v Williams* Challenges – Failure to challenge prospective jurors for racial bias or prejudice from pretrial publicity
 - Lack of peremptory challenge objections to visibly Indigenous jurors
- Lay Witness Testimony
 - Lack of Crown Objection
- Hang Fire
- Requests to Trial Judge to explain law to jury
- Warning shots concession
- Opening and Closing Arguments
- Roles and Responsibilities of Crown Counsel

“I don't object!”

CONCLUSION

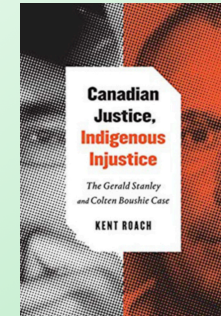
Upon critical analysis of the errors of law found in *R v Stanley*, an appeal should have been called based upon evidence inadmissibility and the Trial Judges errors during his Charge to the Jury.

This case also requires critical analysis that draws questions to the conduct of Crown and if, in this case, he could have conducted the trial and handled the evidence differently, which could have potentially ended in a different outcome.

REFERENCES

Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 1st Sess, 42nd Parl, 2018 (introduction and first reading in Senate)

Kent Roach, *Canadian Justice, Indigenous Injustice; The Gerald Stanley and Colten Boushie Case*, (Montreal & Kingston: McGill – Queen's University Press, 2019)



Delisle, Stuart, Tanovich & Dufraimont, *Evidence: Principles and Problems*, (Toronto: Thomson Reuters, 2018)

Hill, Tanovich, Strezos, *McWilliams' Canadian Criminal Evidence*, 5th Ed, Part III, Ch 12 & 15

John Gibson, *Criminal Law Evidence, Practice and Procedure*

David Tanovich, “With so Many Unanswered Questions, Why no Appeal?” *Globe and Mail*, 9 March 2018, A15.

Public Prosecution Service of Canada Deskbook, 2.2 Duties and Responsibilities of Crown Counsel

Image: <http://amicuscursiaeco.weebly.com/discussions/similar-fact-evidence>

Image: Kent Roach Text Cover

Image: Chris Murphy Letter to Minister Morgan

CANADIAN CASE LAW

R. v. Graveline

R. v. Seaboyer

R. v. Stanley

R. v. Williams

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