

RULE 51
ADMISSIONS

INTERPRETATION

51.01 In Rules 51.02 to 51.06, "authenticity" includes the fact that,

- (a) a document that is said to be an original was printed, written, signed or executed as it purports to have been;
- (b) a document that is said to be a copy is a true copy of the original; and
- (c) where the document is a copy of a letter, telegram or telecommunication, the original was sent as it purports to have been sent and received by the person to whom it is addressed.

REQUEST TO ADMIT FACT OR DOCUMENT

51.02 (1) A party may at any time, by serving a request to admit (Form 51A), request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document.

- (2) A copy of any document mentioned in the request to admit shall, where practicable, be served with the request, unless a copy is already in the possession of the other party.

EFFECT OF REQUEST TO ADMIT

Response Required Within Twenty Days

51.03 (1) A party on whom a request to admit is served shall respond to it within twenty days after it is served by serving on the requesting party a response to request to admit (Form 51B).

Deemed Admission Where No Response

- (2) Where the party on whom the request is served fails to serve a response as required by subrule (1), the party shall be deemed, for the purposes of the proceeding only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

Deemed Admission Unless Response Contains Denial or Reason for Refusal to Admit

- (3) A party shall also be deemed, for the purposes of the proceeding only, to admit the truth of the facts or the authenticity of the documents mentioned in the request, unless the party's response,
 - (a) specifically denies the truth of a fact or the authenticity of a document mentioned in the request; or
 - (b) refuses to admit the truth of a fact or the authenticity of a document and sets out the reason for the refusal.

COSTS ON REFUSAL TO ADMIT

51.04 Where a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved at the hearing, the court may take the denial or refusal into account in exercising its discretion respecting costs.

WITHDRAWAL OF ADMISSION

51.05 An admission made in response to a request to admit, a deemed admission under Rule 51.03 or an admission in a pleading may be withdrawn on consent or with leave of the court.

ORDER BASED ON ADMISSION OF FACT OR DOCUMENT

Motion

- 51.06** (1) Where an admission of the truth of a fact or the authenticity of a document is made,
- (a) in an affidavit filed by a party,
 - (b) in the examination for discovery of a party or a person examined for discovery on behalf of a party; or
 - (c) by a party on any other examination under oath or affirmation in or out of court,
- any party may make a motion to a judge in the same or another proceeding for such order as the party may be entitled to on the admission without waiting for the determination of any other question between the parties, and the judge may make such order as is just.
- (2) Where an admission of the truth of a fact or the authenticity of a document is made by a party in a pleading or is made or deemed to be made by a party in response to a request to admit, any party may make a motion in the same proceeding to a judge for such order as the party may be entitled to on the admission without

waiting for the determination of any question between the parties, and the judge may make such order as is just.

Exception: Deemed Undertaking

- (3) If Rule 30.1 applies to the admission, its use in another proceeding is subject to Rule 30.1 (deemed undertaking).

C.J.D. v. C.E.D., 2020 PESC 21

In a divorce action, the Petitioner issued a Request to Admit. The Respondent did not respond as provided for in Rule 51.03. The court held that, for the purposes of the proceeding only, the assertions set out in the Request to Admit were deemed admitted.

Hughes v. PEITF, 2019 PESC 45

The defendant, which was the successful party on the motion, filed a bill of costs which included fees for both senior and junior counsel, plus disbursements. The unsuccessful plaintiff filed no submissions on costs. The court allowed fees for both counsel, but disallowed the portion of the disbursements related to tabs and binding of documents.

C.G v. P.P., 2020 PESC 22

Following a number of motions in the action, including an abandoned motion for contempt, the issue left to be determined was that of costs. The plaintiff requested costs for her abandoned motion for contempt and a certificate of pending litigation. The defendant requested costs of the abandoned motion pursuant to Rule 37.08(3). The court reviewed the history of the action and the guidance provided by Rule 57. It held that the defendant was primarily responsible for the outstanding issues between certain relevant dates pre-dating the abandonment of the motion and, therefore, awarded partial indemnity costs to the plaintiff for a specific period of time, but not for all of the time frames requested by the plaintiff.

Ayangma v. Eastern School Board, 2009 PESC 20

The plaintiff commenced an action seeking relief under s. 24 of the *Charter*. He brought a motion for summary judgment because the defendant, in response to an order in a proceeding under the *Human Rights Act*, had issued an apology for discrimination caused by the defendant and as found by the Human Rights Commission. The motion was dismissed. The motions judge did not consider the apology an admission of liability for an infringement of the plaintiff's rights under s.15(1) of the *Charter*.

Bassett v. City of Summerside (1999), 171 Nfld. & P.E.I.R. 33 (P.E.I.S.C.-T.D.)

On a motion by the defendant to withdraw a deemed admission, the court found the test applicable in deciding such a motion is as follows: (1) that the proposed amendment or what is proposed to replace the admitted fact or facts gives rise to a triable issue; (2) that the admission was due to inadvertence of the solicitor or the solicitor was wrongly instructed; and (3) that the withdrawal of the admission will not result in any prejudice which cannot be compensated in costs.