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Admit it: There's a Role for Requests to Admit in Disciplinary Proceedings

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By Ben Kates

The scenario is as frustrating as it is foreseeable. A regulator pursues allegations of professional misconduct against one of its members. Many, if not most of the facts in the case are uncontroversial, but the party facing prosecution is loath to engage or negotiate, let alone admit the uncontested facts. As the hearing approaches, the prosecution has no choice but to prepare for a fully contested hearing. They go about preparing witnesses, drafting witness statements and affidavits, and securing tribunal time. Only on the proverbial courthouse steps does the reluctant party come to the table. Witnesses and panel members must be notified, and an adjournment may be necessary. Ultimately, the parties reach a partial or comprehensive Agreed Statement of Facts that could have been drafted months earlier – but with significant expenses having been incurred in the meanwhile. Surely, there must be a mechanism to avoid this predictable waste of time and resources. We make the case that there is: the Request to Admit, a tool regularly employed in civil proceedings, can and should be adapted to professional discipline matters.

What is a Request to Admit?

A Request to Admit is a simple but effective way to narrow the issues between litigants. Employed as a matter of rote in most complex civil trials, they can be found in the civil rules of each Canadian jurisdiction (sometimes under the moniker "Notices to Admit").[1] One party asks the other to admit to the truth of certain facts and authenticity of certain documents. The responding party must engage or face consequences. While the precise mechanism will vary, the procedure usually consists of the following basic structure:

- ***Request Form***: One party asks another to admit the truth of a fact or authenticity of a document by serving a form, often called a "Request to Admit", that sets out one fact or one document per paragraph.
- ***Required Response***: The recipient of the request must serve a responding form, often called a "Response to Request to Admit", within a pre-determined time period. For each fact or document set out in the request, the responding party must either:
    - Admit the truth of the fact or authenticity of the document;
    - Deny the truth of the fact or the authenticity of the document and set out the reason for the denial; or
    - Refuse to admit the truth of the fact or the authenticity of the document and set out the reason for the refusal.
- ***Deemed Admission***: If the recipient fails to provide a compliant response within the timeline, they are deemed to admit, for the purpose of the proceeding only, the truth of any facts or authenticity of any documents not addressed in their response.
- ***Cost Consequences***: Where a party does not admit the truth of a fact or authenticity of a document and that fact or document is subsequently proven at a hearing, the adjudicator may consider that party's failure to admit when awarding costs.
- ***Release Valve***: A deemed admission may only be withdrawn on consent or with leave of the adjudicator.

The Benefits of Requests to Admit

Requests to Admit generally enhance the efficiency of proceedings by narrowing the issues that require determination on the merits. A compliant response will concede those facts and documents that cannot be contested (or are uncontroversial) and provide an explanation for those that remain in dispute. As a result, the party who serves a Request to Admit will obtain (i) partial admissions (ii) a better understanding of their opponent's case and/or (iii) an improved case for costs.

Because the process introduces ramifications for parties who do not cooperate, a Request to Admit is particularly helpful when dealing with a non-responsive or intransigent respondent in professional discipline matters, specifically by:

- ***Reducing the impact of non-responsiveness****:* The threat of deemed admissions makes it more difficult for an uncooperative respondent to delay a proceeding through non-responsiveness. A properly served Request to Admit that sets out the elements of the underlying misconduct can allow a hearing to proceed in the absence of the respondent and without the need to devote hearing time to live witnesses.[2]
- ***Breaking stalemates over Agreed Statements of Facts***: The format of a Request to Admit presents each fact or document in an individual paragraph, and respondents may find it easier to agree to the content of an Agreed Statement of Facts when it is broken down into pieces. If an Agreed Statement of Facts fails to gain traction, a useful strategy is to recast the draft document as a Request to Admit.

The Availability of Requests to Admit in Administrative Proceedings

Despite their potential advantages, Requests to Admit are seldom employed in administrative proceedings. In the realm of professional discipline, they have yet to gain much traction outside of legal regulators. Those regulators that do employ them have done so with success: Ontario's Law Society Tribunal has called it "an important element in the Tribunal's procedures".[3] For tribunals unfamiliar with Requests to Admit, regulators or counsel acting on their behalf can introduce the mechanism in several ways:

- ***Change the Rules***: Any tribunal with the statutory authority to draft its own rules of procedure can introduce Requests to Admit by way of rule amendment. Rules of procedure for the Competition Tribunal, Law Society of British Columbia, and Law Society of Ontario all provide for a Request to Admit process.[4]
- ***Invoke Civil Rules of Procedure***: Many tribunals' procedural rules incorporate by reference their jurisdiction's rules of civil procedure. Where they do, an administrative body may adopt the existing regime without resorting to a rule amendment. The Ontario Land Tribunal, for instance, regularly treats Ontario's Request to Admit rule as part of its rules of procedure.[5]
- ***Invoke Civil Rules of Evidence***: Where a tribunal's enabling statute or rules invoke civil rules of evidence,[6] it is at least arguable that there exists jurisdiction to use a Request to Admit. The Law Society of Manitoba's disciplinary hearings have adopted Requests to Admit based on a provision of the *Legal Profession Act* stipulating, "The rules of evidence that apply in a civil proceeding in the Court of Queen's Bench apply at the hearing."[7]
- ***Argue as a Matter Jurisdiction and Evidence***: Counsel may be able to avail themselves of a Request to Admit even in absence of an express provision. Both the Law Society of Alberta and the British Columbia Human Rights Tribunal have accepted admissions obtained by way of Request to Admit absent any formal rule:
    - A Law Society of Alberta hearing committee found that its jurisdiction to admit facts and evidence pursuant to a Request to Admit was derived from the *Rules of the Law Society of Alberta*, the tribunal's *Pre-Hearing Guide*, and a provision in *Legal Profession Act* that permits it to "hear, receive and examine evidence in any manner it considers proper…"[8]
    - The British Columbia Human Rights Tribunal granted an application permitting the use of Rule 31, Notice to Admit, from the British Columbia *Supreme Rules of Court* (now Rule 7-7). It modified the original rule to recognize that the procedures of a quasi-judicial tribunal should be less formal and more flexible than civil procedure.[9]
- ***Get Creative with Existing Rules***: Counsel should consider how to employ existing rules as the functional equivalent to a Request to Admit. Pre-hearing orders compelling reverse disclosure or particulars,[10] for instance, could have the same effect as a Request to Admit, especially when paired with an Offer to Settle.[11]

A Useful, If Imperfect Tool

Whether in court or professional discipline proceedings, Requests to Admit are not a panacea: a party committed to non-cooperation will not be deterred by the threat of costs; panels may be quick to relieve an aggrieved party of their deemed admissions; and responses to a request to admit, even in the context of a refusal to admit, may lead to confusion or be a ground of future appeal.[12] Nevertheless, parties and regulators that wish to conserve resources, narrow the issues, or build a record for costs should be prepared to make use of the tools available to minimize expenses. Viewed from that perspective, Requests to Admit form an integral part of their kit.

[1] *Alberta Rules of Court*, Alta Reg 124/2010, Rule 6.37; *Supreme Court Rules*, BC Reg 168/2009, Rule 7-7; *Federal Court Rules*, SOR/98-106, Rules 255 and 256 and 400(1)(j); *Court of Queen's Bench Rules*, Man Reg 553/88, Rule 51; Rules of Court, NB Reg 82-73, Rule 51; *Rules of the Supreme Court*, 1986, SNL1986 c42, Schedule D, Rule 33; *Nova Scotia Civil Procedure Rules*, Royal Gaz Nov 19, 2008, Rule 20; *Rules of Civil Procedure*, RRO 1990, Reg 194, Rule 51; Code of Civil Procedure, CQLR c. C-25.01; *The Queen's Bench Rules*, Sask Gaz June 21, 2013, 1370, Rule 6-51; *Rules of Court*, YOIC 2009/65, Rule 31; *Rules of the Supreme Court of the Northwest Territories*, NWT Reg 010-96, Rule 294. Nunavut and Prince Edward Island employ the *Rules of the Supreme Court of the Northwest Territories* and Ontario's *Rules of Civil Procedure*, respectively.

[2] See, e.g., *Law Society of Ontario v. Adewumi*, 2019 ONLSTH 122.

[3] *Law Society of Ontario v. Chung,* 2021 ONLSTH 77 at para. 12.

[4] *Competition Tribunal Rules*, Rules 56 and 57; *Law Society Rules 2015*, Rule 5-4.8; *Law* Society *Tribunal Rules of Practice and Procedure*, Rule 11.3. See also the *Association Bylaws, Code of Ethical Principles and Rules of Conduct and the Public Accounting Licensing Regulations* of the now-defunct Certified General Accountants Association of Ontario, Article 16(a) and (b).

[5] See, e.g., City *Park (Dixie Rd.) Inc. v. Ontario (Ministry of Transportation),* 2021 CanLII 2425 (ON LPAT) at paras 24 and 25; *Trimterra Development Corporation v Ottawa (City),* 2022 CanLII 28182 (ON LT). Rule 26.16 of the *Ontario Land Tribunal Rules of Practice and Procedure* reads as follows: "Applicability of Rules of Civil Procedure: No Tribunal order is required for examinations for discovery or documents. The Rules of Civil Procedure apply to proceedings under this Part unless the Tribunal on motion orders otherwise. (Note, however, that appraisal reports to be relied on must be served at least 15 days before the hearing).

[6] See e.g., s. 49 of the *Health Professions Procedural Code.*

[7] CCSM c. L107, s. 71(1)(5); see, *e.g., The Law Society of Manitoba v Carroll,* 2022 MBLS 1 at para. 4.

[8] *Law Society of Alberta v. Peterson,* 2021 ABLS 14 at para. 6; *Legal Profession Act*, RSO 2000, C L-8, s. 68(1)(a). See also, *e.g.*, *Law Society of Alberta v. Wu*, 2020 ABLS 29; *Law Society of Alberta v. Kazakoff*, 2021 ABLS 10.

[9] *Dadvand v. CB Richard Ellis Ltd*, 2003 BCHRT 20.

[10] See, *e.g.*, *Statutory Powers Procedure Act,* R.S.O. 1990, c. S.22, s. 5.4.

[11] Courts have approved the importation of a civil rules offer to settle mechanism into discipline proceedings: see, e.g., *Reid v. College of Chiropractors of Ontario*, 2016 ONSC 1041 (Div. Ct.) at para. 233.

[12] Note that the Ontario Court of Appeal has treated facts relied on in a refusal to admit as a formal admission of those facts: *Champoux v. Jefremova,* 2021 ONCA 92 at para. 26.

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