Interlocutory challenges to requests to admit: putting teeth into the procedure

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Introduction

The request to admit is an important tactical tool to narrow issues and streamline the lengthy trial process, as it provides a simplified format for the admission of facts. A party served with a request to admit must respond, failing which the party is deemed to admit the truth of the facts or the authenticity of the documents set out in the request for the purposes of the proceeding. Generally, blanket denials of facts and documents have been discouraged by the courts, as they undermine the purpose of the request to admit. However, courts have rarely reviewed the validity of a party's response, instead preferring to consider the denial or refusal when assessing costs at trial. In *Glover v Gorski*,(1) the Ontario Superior Court of Justice has recently given new teeth to the rule by affirming that, in addition to potential costs consequences, an improper response to a request is subject to interlocutory review.

Requests to admit facts or documents

Rule 51.02(1) of Ontario's Rules of Civil Procedure(2) states that a party may request any other party to admit the truth of a fact or the authenticity of a document by serving a request to admit on the party. While an admission has particular relevance when it comes to evidence used at trial, a request to admit can be served "at any time" during the proceeding and must be responded to within 20 days,(3) failing which the party on which the request to admit has been served will be deemed to have admitted the truth of the facts or the authenticity of the documents mentioned in the request to admit for the purposes of the proceeding only.(4) Admissions are also deemed unless the party's response:

- specifically denies the truth of the fact or the authenticity of the document; or
- refuses to admit the truth of the fact or the authenticity of a document and provides reasons for the refusal.(5)

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 when assessing costs.

Facts

The facts in *Glover* were straightforward and not in dispute. The minor plaintiff was struck by a waste management truck while crossing a highway that had no designated pedestrian crossing area. Before examinations for discovery, the defendants served a request to admit on the plaintiffs. The plaintiffs responded to the request with a global refusal "to admit the truth of the facts…on the basis that the truth or falsity of the facts alleged is not entirely clear, calls for a conclusion to be determined by the trier of fact or the statement of fact(s) alleged is vague". Accordingly, the defendants brought a motion to compel the plaintiffs to provide appropriate responses, arguing that the validity of the reason for refusal can be reviewed on an interlocutory motion when the reason for a refusal to admit is inappropriate.

Analysis

The fundamental approach that the courts are required to take with respect to

procedural matters in the Rules of Civil Procedure is reflected in Rule 1.04, which is to construe the rules liberally to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.(6) In particular, the purpose of Rule 51 is to limit the issues in dispute between parties and to dispense with the necessity of proving facts and documents that otherwise would need to be proven.(7)

In determining that it is open to the moving party to have the validity of the responses to the request to admit reviewed on an interlocutory basis, the court relied on Justice Nordheimer's decision in *Foundation for Equal Families v Canada (Attorney General)* (8) in which the following passage was particularly persuasive:

> *"In my view, however, there is a difference between objections raised as to the operation of [Rule 51] and objections raised as to the applicability or scope of the rule. While I agree that the former should generally be left to the trial judge, the latter is something which should be determined in appropriate cases as early in the proceeding as possible. In this case, the respondent says that the rule cannot be used for the purpose to which the applicant is trying to put it. That is a matter that I believe I am in as good a position to determine as a trial judge (or in the context of an application the judge ultimately hearing the application) and, given the impact not only on the application but also on the impending motion regarding standing, an early determination of the issue seems decidedly preferable to a later determination where, if the applicant's position is found to be correct, any benefit to the applicant may well be lost."*(9)

In *Glover,* the court held that the plaintiffs' global refusals to admit the truth of the facts on the basis that the truth or falsity of the facts alleged was "not entirely clear, calls for a conclusion to be determined by the trier of fact or the statement of fact(s) alleged is vague" did not comply with Rule 51 and, more particularly, with Clause 51.03(3)(b), which requires the party's refusal to be accompanied by reasons setting out the refusal. According to the court, none of the three reasons for the refusal to admit was attributed to any specific fact, thereby rendering the refusal unresponsive.(10)

In the end, the court ordered that the responses to the request to admit be struck and that the plaintiffs provide responses to the request in accordance with the rule.

Comment

Glover has affirmed that the validity of a party's response to a request to admit may be reviewed on a motion before trial, rather than leaving the matter to the trial judge. If objections are raised as to the applicability or scope of the rule, these should be determined as early in the proceeding as possible. However, objections as to the operation of the rule should generally be left to the trial judge. In the end, the case serves as a reminder that counsel cannot treat responses to requests to admit in a perfunctory manner; the responses should be neutral and outlined with particularity, and at a minimum must comply with the specific requirements of the rule.

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Endnotes

(1) 2013 ONSC 6578 (SCJ).

(2) RRO 1990, Reg 194.

(3) Rule 51.03(1).

(4) Rule 51.03(2).

(5) Rule 51.03(3).

(6) Rule 1.04.

(7) *Supra* note 1 at para 15.

(8) (1999) 36 CPC (4th) 200 (SCJ).

(9) *Supra* note 8 at para 13.

(10) *Supra* note 1 at para 27.

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