

RULE 35
**PROCEDURE ON EXAMINATION FOR DISCOVERY
BY WRITTEN QUESTIONS**

QUESTIONS

35.01 An examination for discovery by written questions and answers shall be conducted by serving a list of the questions to be answered (Form 35A) on the person to be examined and every other party.

ANSWERS

- 35.02** (1) Written questions shall be answered by the affidavit (Form 35B) of the person being examined, and served on the examining party within fifteen days after service of the list of questions.
- (2) The examining party shall serve the answers on every other party forthwith.

OBJECTIONS

35.03 An objection to answering a written question shall be made in the affidavit of the person being examined, with a brief statement of the reason for the objection.

FAILURE TO ANSWER

Further List of Questions

35.04 (1) Where the examining party is not satisfied with an answer or where an answer suggests a new line of questioning, the examining party may, within ten days after receiving the answer, serve a further list of written questions which shall be answered within fifteen days after service.

Court Order for Further Answers

- (2) Where the person being examined refuses or fails to answer a proper question or where the answer to a question is insufficient, the court may order the person to answer or give a further answer to the question or to answer any other question either by affidavit or on oral examination.

Court Order for Oral Examination

- (3) Where the court is satisfied, on reading all the answers to the written questions, that some or all of them are evasive,

unresponsive or otherwise unsatisfactory, the court may order the person examined to submit to oral examination on such terms respecting costs and other matters as are just.

Additional Sanctions

- (4) Where a person refuses or fails to answer a proper question on a written examination or to produce a document that he or she is required to produce, the court may, in addition to imposing the sanctions provided in subrules (2) and (3),
 - (a) if the person is a party or a person examined on behalf or in place of a party, dismiss the party's action or strike out the party's defence;
 - (b) strike out all or part of the person's evidence; and
 - (c) make such other order as is just.

IMPROPER CONDUCT OF EXAMINATION

35.05 On motion by the person being examined, or by any party, the court may terminate the written examination or limit its scope where,

- (a) the right to examine is being abused by an excess of improper questions; or
- (b) the examination is being conducted in bad faith, or in an unreasonable manner so as to annoy, embarrass or oppress the person being examined.

FILING QUESTIONS AND ANSWERS

35.06 Rule 34.18 applies, with necessary modifications, to the filing of written questions and answers for the use of the court.

Century 21, Colonial Realty Inc. v. Dickson - Thompson, [1995] 1 P.E.I.R. 335 (P.E.I.S.C.T.D.)

The defendant did not respond to written questions and the plaintiff applied to dismiss the statement of defence. The Court refused to dismiss the statement of defence and gave the defendant time to respond to the questions.