

Federal Court



Cour fédérale

Date: 20251027

Docket: T-948-22

Citation: 2025 FC 1728

Toronto, Ontario, October 27, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

**THE GOVERNING COUNCIL OF THE
UNIVERSITY OF TORONTO, ROBERT GAZZALE,
LISA KRAMER AND AI TANIGUCHI**

**Plaintiffs/
Defendants by Counterclaim**

and

**EASY GROUP INC. D/B/A EASY EDUCATION,
EASY 4 EDUCATION CANADA INC., EASY 4.0
EDUCATION INC., EASY 4.0 EDUCATION UTSC INC.**

**Defendants/
Plaintiffs by Counterclaim**

JUDGMENT AND REASONS

I. Overview

[1] This is an appeal of an Order dated February 8, 2024, of Associate Judge Cotter in his capacity as a Case Management Judge [Motions Judge], reported as *The Governing Council of*

the University of Toronto et al v Easy Group Inc et al 2024 FC 206 [Decision]. The Decision involves rulings made by the Motions Judge on motions to compel answers to questions which were refused on examinations for discovery in the context of a copyright infringement action.

[2] For the reasons that follow, I find that the Defendants have not shown any palpable and overriding error in the Decision that would justify this Court's intervention. Accordingly, the Defendants' motion is dismissed.

II. Facts

A. *The underlying action*

[3] This action involves a claim for copyright infringement brought by the University of Toronto [University] and three professors [Professors] [collectively, the Plaintiffs] against Easy EDU and its affiliated companies [collectively, the Defendants].

[4] The Defendants are a related group of companies who offer tutoring services to Mandarin-speaking students at the University. The Plaintiffs allege that the Defendants' business involves the unauthorized reproduction and distribution of original course materials, including lecture slides, syllabi, notes and exams. The Plaintiffs assert that these materials constitute works owned by the University and the Professors, and the Defendants' unauthorized reproduction of the materials for use in their tutoring business, constitutes copyright infringement under the *Copyright Act*, RSC 1985, c C-42.

[5] The Defendants' have denied infringement and raise a defence of fair dealing. The Defendants have also asserted a counterclaim seeking damages for making false and misleading statements under the *Trademarks Act*, RSC 1985, c T-13 and false or misleading public representations under the *Competition Act*, RSC 1985, c C-34.

B. *The procedure for the parties' motions to compel refusals*

[6] On agreement of the parties, the motions to compel were divided into two stages: a first stage where the parties would identify certain general topics and questions for the Court to rule on, which would allow the parties to try to resolve individual questions; and a second stage at which the parties would ask the Court for rulings on questions the parties had not been able to resolve.

[7] The Decision concerns topics and questions from the first stage of the Defendants' motion that fall under a category referred to as, "Plaintiffs' Asserted Works & Draft Infringement Table."

C. *The Draft Infringement Table*

[8] The rulings at issue in the Decision (and on this appeal) relate to a document referred to as a "Draft Infringement Table" [Infringement Table] which was provided by the Plaintiffs as an "assistive aid" in advance of discoveries. The Infringement Table includes columns that identify page numbers from the Plaintiffs' university course material and the corresponding pages on which they say that material appears in the Defendants' allegedly infringing course packs.

[9] The following is an excerpt from the Infringement Table:

DEFENDANTS BEGDOC	DEFENDANTS Page Nos.	PLAINTIFFS BEGDOC	PLAINTIFFS Page Nos.
EASY001650	4	PLF0026710	10
EASY001650	4	PLF0026934	16

[10] The Infringement Table is not a client document; rather, it was created by the Plaintiffs' counsel who stated in the cover letter accompanying its production, that the Plaintiffs reserve the right to update "as and when appropriate, including as further acts of infringement come to light."

III. Issues and Standard of Review

[11] The standard of review to be applied on a Rule 51 motion is that described by the Supreme Court of Canada in *Housen v Nikolaisen*, 2002 SCC 33 at paragraphs 26-36 and *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paragraphs 63-65, 79, 83. In accordance with this standard of review, questions of fact and questions of mixed fact and law (absent an extricable question of law) are reviewable on the deferential standard of palpable and overriding error, whereas questions of law are reviewable on a non-deferential standard of correctness (*Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at para 33).

[12] The parties accept this articulation of the standard of review; however, they disagree over whether the alleged errors in the Decisions involve questions of mixed fact and law or extricable questions of law.

IV. Analysis

[13] The questions that are the basis of this appeal are as follows:

- 18 E Match, element-by-element, the portions of the purportedly infringed document with portions of the purportedly infringing document; and
- 18 F Provide the portion of the page, and of the document, the university asserts has been copied [collectively, the Disputed Questions].

[14] The Motions Judge declined to compel the Plaintiffs to answer the Disputed Questions for the following reasons:

E. match, element-by-element, the portions of the purportedly infringed document with the portions of the purportedly infringing document – This is not an appropriate question. It is asking for a position on a legal issue or argument. Questions of law or argument are improper (see *Bard Peripheral*, at paragraph 20; and *Apotex Inc. v Pharmascience Inc.*, 2004 FC 1198 at paragraph 19). Subsection 3(1) of the *Copyright Act* provides, in part, that “copyright, in relation to a work, means the sole right to produce or reproduce the work **or any substantial part thereof**” [emphasis added]. Whether a substantial part of a work has been copied, involves a qualitative and holistic assessment as to whether a substantial portion of the author’s skill and judgment has been copied; the Court will not look at isolated passages, but the works as a whole (see *Cinar Corporation v. Robinson*, 2013 SCC 73, at paragraphs 25 to 27, 35 and 36).

F. provide the portion of the page, and of the document, the university asserts has been copied - This is not an appropriate question for the same reasons as set out in e) above.

[15] The Defendants submit that the Motions Judge erred in classifying the Disputed Questions as questions of law or argument when the Defendants assert, they are “purely factual

and relevant to unadmitted allegations at the heart of the Plaintiffs' case." According to the Defendants, this error of misclassification led the Motions Judge to further err in two other ways.

[16] First, the Motions Judge erred by failing to consider that in deciding infringement one cannot assess whether the reproduced elements constitute a substantial part of a work without first identifying what those elements are, which they say is "a pure question of fact" and not the "qualitative and holistic assessment" referred to by the Motions Judge.

[17] Second, the Defendants submit that the Motions Judge erred by failing to consider the relevance of the Disputed Questions to the Defendants' fair dealing defence which requires the Court to consider the quantity of the work the fair dealer took, which requires knowing what was taken.

[18] The Plaintiffs disagree. They argue that the Disputed Questions were properly characterized by the Motions Judge as seeking legal positions and they say that the improper nature of the questions cannot be "rehabilitated" by suggesting that the facts the Disputed Questions seek to elicit are relevant to an assessment of copyright or fair dealing.

A. *What is the standard of review?*

[19] The Defendants submit that this appeal involves questions of law or extricable questions of law to be reviewed on a standard of correctness.

[20] I disagree. The determination of whether a particular discovery question is permissible or relevant is typically a question of mixed fact and law subject to a standard of review of palpable and overriding error (*684761 B.C. Ltd v Canada*, 2015 FCA 123 at para 3). Moreover, neither party disagrees with the Motions Judge's articulation of the test for relevance nor still with the legal principle ultimately applied by the Motions Judge that questions of law or argument are generally improper (*Bard Peripheral Vascular, Inc v W.L. Gore & Associates, Inc*, 2015 FC 1176 at para 20 [*Bard*]). Nor do I find a misstep in the application of a legal standard connected to the Defendants' argument that the Motions Judge wholly ignored their pleading in assessing relevance thereby triggering a correctness review (*Canada (Director of Investigation and Research) v Southam Inc.*, [1997] 1 SCR 748 at paras 39-41).

[21] While I agree with the Defendants that nothing turns on the standard of review on this appeal, I find that the Defendants must show a palpable and overriding error in the Motions Judge's analysis (*Madison Pacific Properties Inc v Canada*, 2019 FCA 19 at para 25).

B. *Does the Decision reveal a palpable and overriding error?*

[22] I acknowledge that the Defendants have a valid interest in understanding the Plaintiffs' allegations of infringement, especially this many years into the action. I also agree that inquiries into allegations of infringement and fair dealing involve questions of fact. However, the Defendants have glossed over the actual wording of the Disputed Questions and their context - both of which I find support the Motions Judge's analysis.

[23] It is worth reproducing the Disputed Questions:

- 18 E Match, element-by-element, the portions of the purportedly infringed document with portions of the purportedly infringing document; and
- 18 F Provide the portion of the page, and of the document, the university asserts has been copied.

[24] The Defendants suggest that the Disputed Questions “ask the Plaintiffs to identify, factually, *what* material they say is infringed and *where* the Defendants copied it [original emphasis].”

[25] While the questions appear to be based on the hallmarks of factual inquiry (“who, what, when and where”), the true usefulness of any answer to the Disputed Questions lies in what the Plaintiffs say amounts to infringement, which calls for a legal position or argument. The Motions Judge was alive to the distinction between disguised fact and argument and appropriately referred to judicial authorities addressing this distinction. The authorities he cited note that what may look “on the surface like a mere collection of facts” is not, since the particular facts that will be relied upon are based upon a view of the law (*Apotex Inc v Pharmascience Inc*, 2004 FC 1198 at para 19 citing *Can-Air Services Ltd v British Aviation Insurance Co*, [1988] AJ No 1022 (Alta CA) at para 7 and *Kun Shoulder Rest Inc v Joseph Kun Violin and Bow Maker Inc*, [1997] FCJ No 1386 (FCTD) at paras 15-17). That is the case with the Disputed Questions.

[26] Nor do I find any palpable and overriding error in the manner in which the Motions Judge articulated and applied the test for infringement of copyright to the Disputed Questions. Absent

in the Defendants' paraphrasing of the first Disputed Question is the use of the word "elements." In *Cinar Corporation v Robinson*, 2013 SCC 73 [*Cinar*], the Supreme Court of Canada approved the qualitative and holistic approach to assessing copyright infringement that the Motions Judge referred to and distinguished it from an approach which looks at isolated passages or "elements" in a piecemeal fashion (*Cinar* at paras 35-36).

[27] As for the Defendants' suggestion that the Motions Judge erred in law in ignoring their fair dealing defence in determining the relevance of the Disputed Questions, the Defendants acknowledge that the Motions Judge was both alive to the law that requires relevance to be assessed in relation to all of the pleadings and he referred to the Defendants' fair dealing defence elsewhere in his Decision. Moreover, as the Plaintiffs point out, the Defendants did not raise the relevance of the Disputed Questions to their fair dealing defence on their motion to compel, which means that the Motions Judge did not commit a palpable and overriding error in failing to consider a point of relevance that was not argued.

V. Conclusion

[28] I can therefore find no palpable and overriding error in the Motions Judge's holding that the Disputed Questions call for a position on a legal issue or argument which are not proper questions on discovery. Accordingly, this motion is dismissed.

Neither party came to the hearing prepared to address costs of the motion as required by Article 82 of the *Amended Consolidated General Practice Guidelines* dated June 20, 2025 [the *Guidelines*] choosing instead to write to the Court after the hearing to advise that they had agreed

that the successful party should be awarded costs in the amount of \$5,750, inclusive of disbursements and taxes. The parties did not address when the costs should be payable.

While I will order the amount of the costs suggested by the parties, I am ordering that they be paid in any event of the cause and not forthwith to emphasize the importance of following the *Guidelines*.

JUDGMENT in T-948-22

THIS COURT'S JUDGMENT is that:

1. The Defendants' motion is dismissed; and
2. The Plaintiffs are awarded costs in the amount of \$5,750, inclusive of disbursements and taxes to be paid in any event of the cause.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-948-22

STYLE OF CAUSE: THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO, ROBERT GAZZALE, LISA KRAMER AND AI TANIGUCHI v EASY GROUP INC. D/B/A EASY EDUCATION, EASY 4 EDUCATION CANADA INC., EASY 4.0 EDUCATION INC., EASY 4.0 EDUCATION UTSC INC.

PLACE OF HEARING: HELD BY WAY OF ZOOM VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 23, 2025

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: OCTOBER 27, 2025

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