

**CITATION:** Dixit v. Humber College, 2024 ONSC 1613  
**COURT FILE NO.:** CV-21-00662000-0000  
**DATE:** 20240318

**ONTARIO SUPERIOR COURT OF JUSTICE**

**RE:** PRATIBHA DIXIT, Plaintiff

**- And -**

HUMBER COLLEGE INSTITUTE OF TECHNOLOGY AND ADVANCED  
LEARNING and HASNAIN DATTU, Defendants

**BEFORE:** Justice J. S. Shin Doi

**COUNSEL:** *Olando Vinton*, for the Plaintiff

*Gordon S. Campbell*, for the Defendant Hasnain Dattu

**HEARD:** December 18, 2023

**ENDORSEMENT**

[1] The Plaintiff brings a motion pursuant to Rule 51.06 (1) – Order based on Admission of Fact or Document. The Plaintiff seeks judgment that the Defendant Hasnain Dattu is liable for breach of fiduciary duty, and also seeks an order for assessment of damages.

[2] The Defendant was an instructor at the co-defendant Humber College Institute of Technology and Advanced Learning when he engaged in a sexual relationship with the Plaintiff who was his student.

[3] The Plaintiff's motion is dismissed because there are serious issues of fact and law, there are conflicting submissions and pleadings and credibility issues, the Defendant has a right of trial on viva voce evidence, and a complete and fulsome record is necessary.

**I. Facts**

[4] The Plaintiff was a 27-year-old international student at Humber College, who had completed a master's degree in information technology from a university in India.

[5] The Defendant is a professional photographer who taught courses as a Sessional Instructor at Humber College. In 2019, the Defendant taught social media in the winter term and the History of Photography in the fall term. In 2020, he taught the History of Photography in the Fall session and in 2021, he taught social media.

[6] In 2021, the Plaintiff was a student in the Social Media course taught by the Defendant. The Defendant offered his students two unpaid internships in his photography studio because Humber College required 20 hours for an internship as part of its photography program. The Plaintiff and another student expressed interest but only the Plaintiff followed up with the Defendant.

[7] On February 12, 2021, the Plaintiff went to the Defendant's home. The facts surrounding the visit are disputed. The Plaintiff alleges that the Defendant had a schoolgirl outfit at his home and had the Plaintiff wear it. The Defendant photographed the Plaintiff wearing the schoolgirl outfit at his home. The Plaintiff stayed overnight at the Defendant's home and engaged in sexual intercourse on February 12, 13, 14, 2021. The Defendant allegedly gave the drug, MDMA, to the Plaintiff on those days and again on March 26, 2021. The Plaintiff pleads that the parties also engaged in sexual intercourse on March 19, 2021, and the parties engaged in oral sex on April 10 and 14, 2021.

[8] The Defendant provided the Plaintiff with a work placement at his studio that he shared with other partners, Salvation Studio, from March 30 to April 20, 2021.

[9] The Defendant pleads that he only became aware that the Plaintiff no longer wished to continue a relationship with him on April 23, 2021, when he attended a meeting requested by the Dean who informed him of the Plaintiff's complaint. The Defendant pleads that the Plaintiff initiated and engaged in the consensual relationship with the Defendant conducted solely outside of Humber College.

[10] During examinations for discovery, the Defendant admitted to co-operating with Humber College's investigation which concluded that he engaged in sex with the Plaintiff and used his position as a professor to gain her trust. The Defendant admitted to engaging in sex with the Plaintiff, the Plaintiff consuming MDMA at his home, that he arranged a work placement for the Plaintiff, and that he wrote a reference letter for the Plaintiff.

## II. **Rule 51.06 (1)**

[11] Rule 51.06 (1) provides as follows,

### 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. R.R.O. 1990, Reg. 194, r. 51.06 (1).

[12] The Ontario Court of Appeal explained Rule 51.06 in *Ford Motor Co. of Canada Ltd. v. Ontario Municipal; Employees Retirement Board*, [1997] O.J. No. 4298, 36 O.T. (3d) 384 at 216,

The purpose of Rule 51.06 somewhat parallels Rule 20's purpose. If a party makes an admission (as occurred in the defendant's statement of defence in *Roytor*), Rule 51.06 gives the beneficiary of the admission access to an order based on the admission. For example, if a defence admits to liability, or a particular part of a loss claimed by the plaintiff, Rule 51.06 would permit a motions judge to grant an order based on the admission. Such an order will typically take the form of a summary judgment for part of the plaintiff's claim.

*Dzamba v. Hurst*, [1989] O.J. No. 1261 provides an example of the combined effect of Rules 20 and 51.06. In that case Master Clark held that Rule 51.06 provided a source of relief of the same nature as that available under Rule 20. He did not think Rule 51.06 limited Rule 20. However, in *Mason's Masonry Supply Ltd. v. 690884 Ontario Limited*, [1993] O.J. 10, Ground J. concluded that the two rules served a different purpose. He refused summary judgment for "part of" the plaintiff's claim. He held that the motion should have been brought under Rule 51.06, since the basis of the plaintiff's claim for payment of \$5,000 before trial was an admission made by the defendant.

The relationship between Rule 20 and 51.06 remains somewhat unclear and does not have to be resolved here. All that I need say is that I think the two rules serve a similar, but not identical purpose. Rule 20's purpose is to remove actions, or distinct issues with respect to which there is no genuine issue for trial from the trial system. This advances procedural justice. Rule 51.06's purpose is to permit an appropriate order to be made as a result of a party's admission. An order made under Rule 51.06 in response to an admission may or may not shorten the trial. I see no reason why a summary judgment may not be granted for part of a claim through the combined effect of n Rules 20 and 51.06if there is an admission that satisfies the no genuine issue for trial test and, in the language of Rule 51.06, the order sought (a partial summary judgment consistent with the admission is an order to which "the party may be entitled without waiting for the determination of any question between the parties." (Rule 51.06 (2)).

[13] *In Sigroum Office Management v. Milanis*, [1985] O.J. No. 1663, 4 C.P.C. (2d) 243 (Ont Dist. Ct.) per Mandel D.C.J. at para 1, it was held that the following principles are applicable to a Rule 51.06 motion,

- a. The admission must be clear and definite;
- b. The admission must be of such facts as show the party is clearly entitled to the order asked for;
- c. The rule does not apply where there is any serious question of law to be argued;
- d. The rule does not apply where there is a serious question of fact outstanding;
- e. The motion is based on admissions and proof of facts is not permitted;

- f. The motion should be granted only on a clear case and much care must be taken not to take away the right of trial on viva voce evidence;
- g. To succeed, the moving party must show that there is a clear admission on the face of which it is impossible for the defendants to succeed.

[14] Justice Mew noted in *8150184 Canada Corporation v. Rotisseries*, 2014 ONSC 815 at para 6, “In applying these principles due regard should also be had to the directive to apply the rules to make orders that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding (Rules of Civil Procedure R.R.O. 1990, Reg. 194 (as amended), Rule 1.04(1.1)).”

### III. Fiduciary Duty

[15] There is a serious question of law as to whether the Defendant had a fiduciary duty, the scope of the fiduciary duty if one existed, and whether he breached that fiduciary duty.

[16] The Plaintiff argues that the Defendant had a fiduciary duty and that a *prima facie* breach of fiduciary duty arises in the admissions made. The Plaintiff relies on *M.M. v. P.M.*, 2000 BCSC 1597 (CanLII) which held at para 39 that “it is clear that a teacher/student relationship is usually a fiduciary relationship [*R. v. Audet*, 1996 CanLII 198 (SCC), [1996] 2.S.C.R. 171; *Frame v. Wilson* 1987 CanLII 74 (SCC), [1987] 2 S.C.R. 99].

[17] The Plaintiff further relies on *Galambos v. Perez*, [2009] 3 S.C.R. 247 for the categories that give rise to fiduciary obligations including those in which “one party is given a discretionary power to affect the legal or vital practical interests of the other” (at para 70). The Plaintiff argues that the Defendant exercised his discretionary power to affect the Plaintiff’s legal or vital practical interests when he arranged for her work placement at his studio and wrote a reference letter for her shortly after having sex with her.

[18] The Plaintiff argues that breach of fiduciary duty is satisfied once the student reported the teacher’s sexual conduct despite his pressure for her not to do so. The Plaintiff submits that the Defendant stated that “... if you mention us, he has to report it...” The Plaintiff submits that Humber College’s investigation concluded:

...Mr. Dattu induced Ms. Dixit to engage in a sexual relationship with him. He obtained her trust with his position as a professor, his ability to offer her an internship and their shared Indian background. He then provided her with MDMA before their first sexual encounter.

[19] The Defendant stated he had only one conversation with the investigator. The Defendant pleads that there is no basis in either fact or law that the Defendant has breached a fiduciary duty. The Defendant pleads that at all times in the classroom, on any Humber College premises, and when using Humber College data systems, the parties had a professional relationship. He argues that he has a history of helping aspiring photographers, he publicly announced in class that he could offer two unpaid internships in his photography studio, and that it was the Plaintiff who initiated the relationship. The Defendant further pleads that he never exerted any express or

implied coercion or pressure or offered inducements of any sort so that the Plaintiff would continue her relationship with him.

[20] I find that the Defendant admitted to sexual intercourse with the Plaintiff and drug use, but he did not admit to a fiduciary duty to the Plaintiff or a breach of that fiduciary duty. Given the conflicting submissions and pleadings of the parties, serious questions of law remain as to whether the Defendant had a fiduciary duty to the Plaintiff, the scope of the fiduciary duty to the Plaintiff if a duty existed, and whether the Defendant breached that fiduciary duty. In accordance with the principles set out in *Sigroum Office Management v. Milanis*, Rule 51.06 does not apply due to the serious questions of law to be argued. Questions also remain as to whether the relationship between the parties who are both adults can be characterized as a typical teacher/student relationship, whether it matters where the sexual relationship took place, whether there was an exercise of discretionary power by the Defendant, and whether the issue of who initiated the sexual relationship is significant. These questions are important, and complex given the factual matrix.

#### **IV. Consent**

[21] There is a serious question of fact and law as to whether the Plaintiff consented to the sexual relationship with the Defendant and drug use. The Plaintiff relies on *Norberg v. Wynrib*, [1992] 2 S.C.R. 226 for the argument that the Defendant as a teacher had the ability to “dominate and influence” the student and that no genuine consent was given to the first sexual contact.

[22] The Defendant pleads that the Plaintiff mixed the MDMA she produced with water and initiated physical contact with the Defendant. The Defendant further pleads that they continued an intimate relationship and there were many times when the Plaintiff wanted sex from the Defendant, and sometimes the Defendant declined. The Defendant argues that the Plaintiff has not advanced a sufficient factual foundation for the motion.

[23] A fulsome factual record and evidence are required to determine the issue of consent including whether the Defendant dominated and influenced the student. There is no admission by the Defendant that he dominated and influenced the student to have sex with her. The Defendant denies that he was the instigator of the sexual relationship and drug use. Given the conflicting submissions and pleadings, there are credibility issues. While the sequence of events indicates that the letter of reference was provided after the Plaintiff had sex with the Defendant, and that the internship was arranged also after the sex, the sequence is not conclusive that favours were exchanged for sex and that there was no consent.

#### **Disposition**

[24] Hence, I dismiss the Plaintiff’s Rule 51.06 motion based on admissions made by the Defendant given the serious questions of law and fact. This is not a clear case given the conflicting submissions and pleadings, and credibility issues. The Defendant has a right of trial on viva voce evidence despite the clarity of his admissions of a sexual relationship and drug use involving the Plaintiff and that he co-operated with Humber College’s investigation.

[25] It is not necessary for me to analyze whether Rule 51.06 can be pursued without Rule 20, as argued by the Defendant. It is also not necessary for me to analyze whether an order for an assessment of damages is appropriate.

[26] I am not inclined to award any costs for this motion given the novel issues raised in this case and that there was some merit in the Plaintiff's position.

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JUSTICE J. S. SHIN DOI

**Released:** March 18, 2024