

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on March 13, 2014,

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters*, 1995,

AND IN THE MATTER OF the *University of Toronto Act, 1971*, S.O. 1971, c. 56 as amended S.O. 1978, c. 88

BETWEEN:

UNIVERSITY OF TORONTO

- and -

Z [REDACTED] T [REDACTED]

REASONS FOR DECISION

Hearing Dates: December 3, 2014; March 16, 2015 and April 6, 2015

Members of the Panel:

Mr. Paul Schabas, Lawyer, Chair

Professor Markus Bussmann, Faculty of Applied Science and Engineering, Faculty Panel Member

Mr. Sean McGowan, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland, Barristers

Mr. Patrick Hartford, Legal Case Worker, Downtown Legal Services

Ms. Rubing Wang, Mandarin Interpreter

Ms. Kate Abulizi, Mandarin Interpreter

Ms. Kasha Visutskie, Academic Integrity Office, Faculty of Arts and Science

Dr. Kristi Gourlay, Manager, Office of Student Academic Integrity, Faculty of Arts and Science

Ms. Z [REDACTED] T [REDACTED], the Student

Ms. Nancy Prior, Academic Advisor, New College, University of Toronto

Ms. Denise Gray, Associate Registrar, Innis College, University of Toronto

Mr. Albert Tang, Intelligence Officer, Canada Border Services Agency

In Attendance:

Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

Ms. Yumei Lui, Observer

Summary

- [1] On December 4, 2013, the Office of Academic Integrity at the University received an anonymous email indicating that a student, Z█████ T█████, would be hiring someone to write her exams. An investigation was commenced. It was confirmed the student was enrolled as an undergraduate at Innis College, and she had 3 exams scheduled that month. A case officer, Kasha Visutskie, attended Ms. T█████'s first exam on the morning of December 10 in CSC 108. At the end of the exam, Ms. Visutskie confirmed that Ms. T█████ did in fact attend and write the exam. Ms. T█████ signed in for the exam in her usual way using Chinese characters, her T card was checked and appeared in order, with the photo matching that on record at the University, and she also produced an Ontario drivers licence. Ms. Visutskie also asked her to write her name, student number and sign her name, and also took her picture. Later that day, Ms. T█████ also attended and Ms. Visutskie observed her write a second exam, in EAS 210.
- [2] However, on December 19, Ms. Visutskie attended Ms. T█████'s third exam in STA 220, and observed someone else representing himself to be Ms. T█████. Ms. Visutskie approached the person after the exam. She confiscated his T Card, which appeared to have been altered or fake. He was asked to sign his name, which he did in English, signing it as Wu Yuze. He had no other identification with him and had to look at his T card when asked to write his student number. He was not Z█████ T█████.
- [3] This much is not in dispute. Ms. T█████ conceded that someone else wrote her STA 220 exam on December 19, as she was in Beijing visiting her mother, who was ill. However, she asserts that she did not intend, or authorize, anyone to write the exam on her behalf. Instead, her defence is that she left hurriedly for China on December 12 and asked an acquaintance, Mengshe Yue, to help her take care of the fact that she would be missing the exam. She said that she only learned from him after December 19 that he had sent someone to write it in her place. She said that she was then a victim of extortion by Mr. Yue to whom she paid several thousand dollars in January 2014 as he offered to try to fix things for her. Ms. T█████ provided this explanation for the first time at the hearing. For the reasons below, the Panel does not accept her explanation as credible or honest. We find that Ms. T█████ knew, or certainly ought to have known, that Mengshe Yue would arrange to have someone attend on December 19 to write her exam, and therefore she is guilty of academic misconduct under the Code.

Charges and Particulars

- [4] The charges against Ms. T█████ are as follows:

- 1) On or about December 19, 2013, you knowingly had another person personate you at the final examination in STA220H1 (the "Course"), contrary to section B.I.1.(c) of the Code.
- 2) In the alternative, on or about December 19, 2013, you knowingly obtained unauthorized assistance in connection with the final examination in the Course, contrary to section B.I.1.(b) of the Code.
- 3) In the further alternative, on or about December 19, 2013, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the Code in order to obtain academic credit or other academic advantage of any kind in connection with the final examination in the Course, contrary to section B.I.3.(b) of the Code.
- 4) On or about December 19, 2013, you knowingly forged or in any other way altered or falsified an academic record, namely a University of Toronto T-Card, or uttered, circulated or made use of such forged, altered or falsified record, contrary to section B.I.3.(a) of the Code.
- 5) In the alternative, on or about December 19, 2013, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the Code in order to obtain academic credit or other academic advantage of any kind in connection with a forged, altered or falsified University of Toronto T-Card, contrary to section B.I.3.(b) of the Code.

Particulars

- 6) At all material times, you were a student at the University of Toronto Faculty of Arts and Science. In Fall 2013, you enrolled in the Course, which was taught by Augustin Vukov.
- 7) On December 19, 2013, students in the Course wrote the final examination in the Course (the "Exam").

- 8) You did not attend the Exam.
- 9) A male individual attended the Exam with a forged, altered or falsified University of Toronto T-Card bearing your name and student number but not your photograph (the "T-Card"). That individual wrote the Exam and submitted the Exam in your name. The individual represented to the University that he was you, and presented the T-Card to the University. He later identified himself as "Wu Yuze".
- 10) You knowingly requested and paid that individual to personate you at the Exam and to use the T-Card in the manner set forth above.
- 11) By engaging in the conduct described above:
 - (a) You knowingly had another individual personate you at the Exam;
 - (b) You knowingly obtained unauthorized assistance at the Exam from the individual; and
 - (c) You forged, or uttered, circulated or made use of, the T-Card.
- 12) You engaged in the conduct described above in order to obtain academic credit or other academic advantage.

The Evidence

The student's explanation

- [5] Ms. T■■■ does not dispute that someone attended and wrote her exam on December 19, as described above. She led evidence that she was in China at the time visiting her mother, who was ill, and this is not disputed by the University. Ms. T■■■ did not attend the Dean's designate meeting set for January 29, 2014, and at no time did she take any steps open to students when they miss an exam to seek dispensation.
- [6] Ms. T■■■ testified at some length. Her direct examination took place on December 4, 2014, following which the hearing was adjourned for the University to further investigate the matter. Her cross examination took place on March 16, 2015, and the University then called reply evidence, without objection, on April 6, 2015.
- [7] Ms. T■■■ is from China. She was 20 years old when she testified. She came to Canada when she was 16 to complete high school. She attended two private high schools, living on their campuses, where, in addition to her required courses, she took ESL courses to improve her English. She took the TOEFL exam in January 2012, following which she was admitted to U of T. Although she attended high school taught

in English in Canada, and began attending U of T in the fall of 2012, where all of her courses and assignments are in English, she asked if she could testify through a Mandarin interpreter. Her counsel explained that her English is "functional" but she finds it hard to communicate in English when people speak fast or she is under stress. Ms. Lie did not object to the use of an interpreter; however in cross examination she asked Ms. T█ to do her best in English, and thereafter her evidence alternated between English and Chinese. The panel observed that she seemed to have little difficulty when she spoke in English.

- [8] Ms. T█ was in her second year at U of T in the fall of 2013. She had completed her first year in 2012-2013. Sometime in mid-November 2013 she learned that her mother was ill in China, and at the beginning of December she was told that her mother was hospitalized. She told her friends, who were all Chinese students or from the Chinese community, about this, who noticed that she was "really down". She said that people were urging her to go home to visit her mother. On December 10, she was contacted by her Buddhist church because one of the Church masters was going to China on December 12 and a plane ticket was available to accompany the master. She agreed to buy the ticket and paid the Church cash for it at the Airport when she left on December 12. The price was about \$1000. Ms. T█ had withdrawn \$1500 in cash on December 11 to pay for the plane ticket and, she told us, to buy shoes for her mother on the way home during a stopover in Abu Dhabi.
- [9] Ms. T█ told the panel that after she booked the ticket she contacted Mengshe Yue, who was a friend she had met in a class in first year and was a very good friend of a fellow student at the Innis College residence, Fang Yi. Ms. T█ said she did not know Mr. Yue well, but would often see him around. Ms. T█ said that Mengshe Yue was older than her other student friends, and took care of small things for her as he had lived in Canada for some time and was helpful to her. She asked Mengshe if he could help her postpone the exam and he said he could take care of it for her. He asked for her student number and her ROSI and email passwords, which she gave him. She also gave him a picture of her T-card. Ms. T█ said she was in too much of a hurry to deal with postponing the exam herself and said that she expected Mr. Yu to speak to the professor, just like one would do back in China, she said. She said she did not pay Mr. Yue anything at that time, nor was there any discussion of paying him.
- [10] A few days after the exam on December 19, Ms. T█ said she was contacted by Mr. Yue who told her there were problems with the exam but not to worry about it. A few days later she says he called her to say he'd found someone to write the exam for her, and she said this made her "really really mad." She felt it put her in "such a bad place", she felt she couldn't go back to school, and said she "didn't know who to contact at the

school.” Mengshe Yue said he would see if he could resolve it, but needed money “for transportation” and would not try to solve the issue for free. So on December 31, 2013 Ms. T■■ sent Mr. Yue \$500 by bank email bank transfer. Over the next month, in January, Ms. T■■ paid Mr. Yue an additional \$8000 in three installments. She said she realized at a certain point that he was probably extorting money from her.

- [11] Ms. T■■ returned to Toronto on January 8 for two weeks. She returned to China on January 20 and did not complete her courses in the spring of 2014, explaining that she was under a lot of stress, with “constant headaches” and her mother was not well either. She only returned to Toronto on September 4, 2014, when she enrolled in courses for the 2014-2015 academic year.

I. The implausibility of the student’s story

- [12] Ms. T■■’s explanation is not plausible for a number of reasons.

- [13] First, Ms. T■■ was well aware of who to reach out to if she had an academic problem. In the winter term of her first year, in early 2013, Ms. T■■ had meetings with academic advisors at her college, Innis College. She had two meetings with Nancy Prior in March 2013, Acting Associate Registrar, Recruitment and Transition, who assisted her in converting a course she was struggling in to a credit/no-credit course. This also involved Ms. T■■ seeking the approval of the professor, which she obtained. Ms. T■■ was evasive when questioned about this in cross-examination, initially saying she could not remember these events.

- [14] Ms. T■■ also admitted, after first saying she could not remember, that she went to Innis College on her own initiative and met with Denise Gray in April 2013 about being permitted to major in economics, which Ms. Gray told her was not possible as she had not achieved a high enough grade in ECO 100. Ms. T■■ admitted she attended with a friend but said she could not remember which friend. All of her dealings at Innis were in English. Ms. Gray said Ms. T■■ was quite assertive as she insisted that a friend at another college had been permitted to enter the economics major with a similar poor mark in ECO 100.

- [15] Ms. T■■’s relationship with Mengshe Yue was also the subject of cross-examination. She said she first met him in first year at the mid-term test for the AST 101 course in astronomy, taught at Convocation Hall. Mr. Yue was a good friend of a woman Ms. T■■ described as her “roommate” and a good friend, Fang Yi, who lived on another floor in the Innis College residence where Ms. T■■ lived during her first year at U of T.

Although Ms. T ■ saw Mr. Yue, who she said was 4 or 5 years older than her, once or twice a week during first year, she said she could not remember what he was actually doing at U of T, saying that she believed he had been in engineering, but had dropped out and had come back to study "with us". Ms. T ■ said she didn't know Mr. Yue well, but acknowledged that she would communicate with him by a texting app called "WeChat", and that she also had his phone number and email address. She agreed she continued to see Mr. Yue occasionally after she completed first year and moved out of Innis College residence, because of her friendship with Fang Yi.

- [16] In November 2013, Ms. T ■ said she told a number of her friends about her mother's illness, including Fang Yi and Mengshe Yue. However, she said she did not plan to return to China until after her exams were over, and that these plans only changed on December 10 when her church contacted her about the availability of a plane ticket leaving on the 12th of December. However, Ms. T ■ also said that Mengshe Yue had contacted her at the beginning of December to see if she needed any help with her mother. She said she then contacted him for help on the 10th and asked him if there was some way to deal with this, to which he said not to worry, and he would see what he could do.
- [17] Ms. T ■ said she thought that Mr. Yue would speak to her professor and seek a deferral, but she gave him no documents for such a purpose despite saying, in her direct examination, that she thought the process to defer an exam was like it was in China, in which you would need to show documentary support for why the exam is missed. It was not explained how Ms. T ■ would know the process in China given that she left when she was still in high school. In any event, she took no steps in December to seek a deferral by submitting any documents. Indeed, she did nothing before or after she left Canada in December other than to vaguely leave things in Mr. Yue's hands, who said he would take care of it and "she didn't ask for details." She did not contact Ms. Prior or Ms. Gray at Innis, ever. She did not contact her professor, though she says she gave Mr. Yue the name of the professor, nor did she contact her TA in the course.
- [18] Ms. T ■ said she reached out to Mr. Yue for help rather than her friends because he was "older" and "would have more weight to solve the problem", even though she said she had only actually seen him twice in the fall of 2013. She did not reach out to her friend Fang Yi, who knew Mengshe Yue well.
- [19] What she did give Mr. Yue in December, she said, were her user name and password for ROSI and her email, despite knowing that they were not to be given to anybody, and a copy of her T-Card.

- [20] After hearing from Mr. Yue by text that something had gone wrong when a person attempted to write the exam for her on December 19, Ms. T■■ did not contact anyone at U of T about it. Nor at any time while she was in Toronto in January 2014 (she returned to Canada on January 8) did she seek help from anyone at the University for missing the STA 220 exam, nor did she communicate with the University at all. While there were email exchanges purporting to be with her, Ms. T■■ said those emails were sent by Mr. Yue, who had her password and access to her email account. However, Ms. T■■ acknowledged that she could also access her email at the time. She admitted she was aware that Mr. Yue was writing emails on her behalf in January 2014, and that she was aware at that time that the University wanted to meet with her, and that she nevertheless still left things in Yue's hands, saying that he assured her he would cancel the meeting.
- [21] Ms. T■■ claimed she didn't check her email and look at the exchanges with the University, saying that she only saw bits of them sent to her by Yue on the WeChat app; however, she was emailing documents to Yue in January, such as the hospital records for her mother. She also conceded she was aware that Mr. Yue was lying to the University on her behalf, asserting that she had brain cancer, and needed to return to China.
- [22] Ms. T■■ said she didn't contact anybody, including her friend Fang Yi and her parents. When Yue demanded money she said she paid him because she had to trust him to get out of the problem. Ms. T■■ also said she deleted all of her text messages and other communications with Mr. Yue, asserting that she regularly deleted all her messages because they took up too much memory on her phone.
- [23] Ultimately, Ms. T■■ contacted the University again in the summer of 2014, returning to enroll in courses at Innis College in September 2014, at which time she had the wherewithal to meet with someone at Innis College to seek permission, through Innis, to re-take ECO 100. She did not tell them about Mengshe Yue improperly writing an exam for her.
- [24] The University led evidence in Reply that cast further doubt on Ms. T■■'s explanations. Both Ms. Prior and Ms. Gray testified about their interactions with her in the spring of 2013. While Ms. Prior described Ms. T■■ as reticent and recommended remedial English to build her confidence, Ms. Gray commented that she spoke out that it "wasn't fair" that she could not get into the economics major when she had not achieved a 67% in ECO 100 when, she said, a friend was able to do so.

- [25] We also learned more about Mengshe Yue from University witnesses in Reply. He had been enrolled in engineering but had not completed his degree. He was born in 1986. There was no record of him ever being enrolled in AST 101. We also heard that he was involved in a sophisticated and lucrative surrogate exam and test writing business that would charge students, on average, about \$6000 to \$7000 dollars for an exam. A witness from Canada Border Services gave details of this, including the seizing of false passports being imported from China, and other fake identification. Indeed, when Mr. Yue was arrested (he was subsequently convicted of at least one criminal offence arising from these activities) he had in his possession another fake T-Card with Z██████ T██████'s name on it, but with a photo of a different person than the fake T-Card used in December 2013.
- [26] The University argued that this additional T-Card had likely been used in April 2013 for Ms. T██████'s exam in ECO 100, noting that on the sign-in sheet for that exam her signature was not in Chinese characters, as she testified was always her practice, and as was the case in all of the other exams she wrote. Ms. T██████ denied that anybody else had written the ECO 100 exam.
- [27] There was also evidence from the University about considerable activity on Ms. T██████'s SWS Activity Log in December and January, regarding dropping and adding courses, coming from both Toronto and China, including activity from Toronto that occurred while Ms. T██████ was in China which would have been caused by Mr. Yue. The University submitted that based on the IP address data showing Mr. Yue's activity, Mr. Yue likely accessed Ms. T██████'s SWS log on December 2, which is, according to Ms. Yue, well before she would have contacted him for help on December 10 when she said she first contemplated missing the STA 220 exam, and therefore before he would have been able to access her records. However, we are not able to conclude that the SWS Activity came from Mr. Yue, as the evidence on IP addresses and their location was not reliable or detailed enough to reliably make that inference. However, it would be consistent with the anonymous email warning that someone else was going to write Ms. T██████'s exam, which was received by the University on December 4, 2013, and was never explained by Ms. T██████.

II. Conclusions on the Evidence

- [28] In our view, Ms. T██████'s evidence must be rejected. It is implausible and inconsistent with other evidence. The anonymous tip on December 4 suggests Ms. T██████ had told someone else about her plan, and that it had been contemplated well before December 10. If, as Ms. T██████ testified, she knew what was needed to get a deferral,

why did she wait until January to send Mr. Yue documents? And why didn't she contact Innis College herself, either before she left or once she had arrived in China on December 14, still some 5 days before the STA 220 exam? Her failure to reach out to Innis College when they had helped her previously, or to anyone when she was in Toronto in January 2014 cannot be explained away by her being forced to trust Mr. Yue. If she was forced to trust Mr. Yue, common sense suggests it is because she had hired him to do what he did. And she was paying him for it in January. Her inaction in January, knowing that Mr. Yue was lying to the University on her behalf, is also indicative of dishonesty.

- [29] Ms. T■■■■'s evidence lacks corroboration. She did not call Fang Yi, or friends or members of her church to speak to the issue of her mother's illness and her concern over this in early December, or her sudden opportunity/decision to leave on December 12 for China. The deletion of all of her communications with Mr. Yue is also troubling. Ms. Lie said it defies logic to have deleted communications which are exculpatory, and we agree.
- [30] Ms. Lie also asked us to rely on Ms. T■■■■'s demeanour when testifying. We too were troubled by her testifying through an interpreter, and her frequent retreats to the interpreter in cross-examination; however, demeanour is a difficult thing to assess, especially when one is young, at a hearing in a second language, and all alone but for her counsel. And so we do not draw any conclusions from her demeanour.
- [31] The evidence about the ECO 100 exam, and the suggestion that she did not write it is also troubling, but we do not give this any weight in coming to our decision.
- [32] Finally, another factor in our decision is that Yue's actions do not make sense unless he expected to be paid. Mr. Yue went to the trouble of finding someone to write the STA 220 exam on December 19. A detailed aid sheet was prepared. A fake T-card was prepared. It is reasonable to assume that Mr. Yue, and the individual who prepared for and wrote the exam, would not have done this without an expectation of compensation. Mr. Yue was in the business of surrogate test writing. There is no basis to think that he, or the person who wrote the test, would have "gone rogue" and done this without expectation of payment simply to help out Ms. T■■■■. The only reasonable, common sense conclusion, is that Ms. T■■■■ reached out to Mr. Yue because she knew he was in that business and could fix things for her by having someone write the exam.

Conclusion

[33] The University must prove its case on a balance of probabilities based on clear and convincing evidence. The only issue in the case is whether the student "knew" of the offence. Knowledge does not have to be subjective, or actual knowledge, but is established on an objective test of whether the student knew or ought to have known. In our view, the University meets either test. There is ample basis on which to conclude, on a balance of probabilities, that Ms. T■■ was a knowing participant in having someone else write her exam. Further, having regard to the evidence of her relationship with Mr. Yue, his occupation (or not), and her interaction with him in providing him with personal information to facilitate the exam, including the T-Card and ROSI passwords, she ought to have known what was going to happen. Accordingly the charge on Count 1 is made out.

[34] We also conclude that Ms. T■■ is guilty under Count 4 of forging a University record. She gave Mr. Yue a copy of her T-Card which she should not have done, and had no good reason to do. Reasonably, she ought to have known that this was for the purpose of forging a University document, which was in fact done.

[35] Finally, if we are wrong on the above conclusions, we would in any event find Ms. T■■ guilty under Count 3 because she engaged in dishonesty in giving out her T-Card and permitting Mr. Yue to lie to the University in the correspondence in January 2014.

[36] This case was not without difficulty and challenges for both sides and the Tribunal appreciated the efficient manner in which it was presented by counsel. A date for submissions on penalty will be set in due course.

Dated at Toronto, this 22 day of June, 2015



Mr. Paul Schabas, Chair