THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on October 26, 2015;

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

B E T W E E N:

THE UNIVERSITY OF TORONTO

- and -

L[redacted] D[redacted]

Hearing Dates: April 7, 2016, June 23, 2016, June 29, 2016

Members of the Panel:

Ms Lisa Brownstone, Barrister and Solicitor, Chair
Dr. Joel Kirsh, Faculty Panel Member
Mr. Carl Shen, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Barristers
Ms. Lucy Gaspini, Manager, Academic Integrity & Affairs, University of Toronto, Mississauga ("UTM")
Ms. Shu Cui Lin, Paralegal for the Student
Mr. Joseph Jin, Assistant to Ms. Lin
Professor Kathleen Yu, Couse Instructor of the Course ECO202Y5Y, UTM
Professor Catherin Seguin, Dean's Designate, UTM
Ms. Alexandra Di Blasio, Academic Integrity Assistant, UTM
Ms. Lucy Gaspini, Manager, Academic Integrity & Affairs, UTM
Ms. L[redacted] D[redacted], the StudentMr. Youzhi Li, friend of the Student, UTM
Ms. X[redacted] C[redacted], friend of the Student, UTM
Ms. H[redacted] J[redacted] L[redacted] friend of the Student, UTM
Ms. Mary Xu Ling Wang, interpreter for the Student (June 23, 2016 and June 29, 2016)

In Attendance:

Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances (April 17, 2016 and June 29, 2016)
Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances (June 23, 2016)
Mr. Sean Lourim, IT Support, Office of the Governing Council (June 29, 2016)
Mr. Y[redacted] J[redacted], the Student's boyfriend (April 7, 2016)

Preliminary

[1] The Trial Division of the University Tribunal was convened on April 7, 2016 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "*Code*") laid against the Student by letter dated October 26, 2015 from Professor Sioban Nelson, Vice-Provost, Faculty & Academic Life.

Hearing on the Facts

[2] The charges facing the Student were as follows:

(1) In or about March, 2015, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, namely your answer sheet for Term Test 3 in ECO202Y5Y, or knowingly uttered, circulated or made use of such forged, altered or falsified document, contrary to section B.I.1.(a) of the *Code*.

(2) In the alternative, in or about March 2015, you knowingly forged or in any other way altered or falsified an academic record, namely your answer sheet for Term Test 3 in ECO202Y5Y, or uttered, circulated or made use of such forged, altered or falsified document, contrary to Section B.I.3.(a) of the *Code*.

(3) In the further alternative, in or about March 2015, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind by submitting a forged, altered or falsified answer sheet for Term Test 3 in ECO202Y5Y, contrary to section B.I.3.(b) of the *Code*.

[3] Particulars of the charges were as follows:

(1) In Fall 2014, you were registered at the University of Toronto Mississauga. You enrolled in ECO202Y5Y (Macroeconomics), which was taught by Professor Kathleen Yu (the "Course").

(2) On or about February 12, 2015, you wrote Term Test 3 in the Course, which was worth 12.5% of your final grade (the "Test").

(3) On or about March 2, 2015 your Test paper was returned to you. You received a grade of 18/50.

(4) After receiving your Test back, you advised the instructor that your Test had been marked incorrectly, and provided the instructor with a page of explanatory notes and your Test paper (the "Resubmitted Test").

(5) You knowingly forged, altered or falsified the Resubmitted Test before you resubmitted it to the instructor in an attempt to obtain additional marks.

(6) You uttered, circulated and made use of the Resubmitted Test knowing that it had been forged, altered or falsified.

(7) You knowingly presented the forged, altered or falsified Resubmitted Test to the instructor intending that the University would rely on it and for the purpose of obtaining academic credit or academic advantage.

[4] University counsel advised that the University intended to focus on the first charge and, if it were proven, the University would withdraw the alternative charges, 2 and 3. The Student denied all charges.

The Evidence

[5] Professor Kathleen Yu was the course instructor in ECO202. It was a large course; at the beginning, there were about 350 students in the class, which decreased to about 275 or 300 by the end of the term. Professor's Yu's syllabus contained extensive instruction about term work and course policies. There were to be four term tests each worth 12½ per cent of the final marks. Students were able to have term tests re-marked, with careful re-marking policies set out in the syllabus. Professor Yu had each student, including the Student, print their name and student number on a Course Syllabus Acknowledgement Form, acknowledging that they had read the syllabus, understood and agreed to the policies in the syllabus, and had read and understood the policies in the *Code*. Students further acknowledged that their failure to abide by the course and University policies may have significant academic consequences. The Student signed her acknowledgement form on September 22, 2014.

[6] Professor Yu explained that she encouraged students to submit their tests for re-marking within the rules set out in the syllabus. The rules were, understandably, that students were not allowed to make any marks whatsoever on a test that had been returned to them, that they wished to submit thereafter for re-marking. Professor Yu took careful steps to ensure that she could determine whether any additional marks had been made. She scanned and electronically stored each test in its original form. Professor Yu testified that on the first day of class she told the entire class, when taking them through the syllabus and discussing re-marking, that it is tempting to add marks to an exam before re-submitting it. She told the students not to do so. She advised them that every year somebody does so and gets caught, and that students have been suspended for this conduct in the past.

[7] Professor Yu explained that before the students wrote a test, Professor Yu typed out the solutions. Professor Yu announced at the end of the test that the solutions would be posted on-line and available to the students within twenty to thirty minutes.

[8] The test at issue in this case, term test 3, was written on February 12, 2015. On February 28, 2015, Professor Yu announced on Blackboard that the marked tests would be returned the following class, which was on March 2. At about the same time that she made the announcement, and before the marked tests were returned to the students, Professor Yu also posted a marking scheme so that the students could check for consistency and ensure that their tests had been appropriately marked. Professor Yu advised the students through Blackboard that they should take the time to carefully go through the marking scheme and compare it to how their test paper was marked. She encouraged the students to submit their tests for re-marking in accordance with the instructions provided in the syllabus if marks had not been awarded properly. Professor Yu testified that in this particular course for this particular year, she was not happy with the Teaching Assistant who was doing her marking for her. She found inconsistencies in the first two term tests and therefore encouraged the students to re-submit their tests. Many students took her up on this and resubmitted their tests for review and re-marking.

[9] The Student received 18 marks out of a possible 50 on term test 3 when the Teaching Assistant marked it. She submitted her test for re-marking.

[10] When Professor Yu looked at the Student's resubmitted test, she saw nothing obvious had been added and therefore started to re-mark it. The Student had followed the instructions in the syllabus and provided a cover page indicating which pages should be re-evaluated and why. Professor Yu began to give a number of additional marks to the Student but when she reached the fifth page of the test, she got a "fishy" feeling. It looked to her as though some additional marks had been made. When she got to the bottom of the fifth page, she wondered how the Teaching Assistant had missed the correct answer and not awarded marks for it. She found this unlikely. She therefore went back to her scan of the Student's originally submitted test and noted that although the correct answer was on the original test, it was followed by a further equation leading to an incorrect answer. The incorrect answer on the test submitted for remarking had been crossed out.

[11] This prompted Professor Yu to review the entire test and compare it to the Student's original scanned test. She found a second alteration: a symbol had been inserted into the answer of a different question. The symbol appeared to be the Greek mu, with an arrow. It will be referred to in these reasons as mu↑. Professor Yu testified that the addition of the symbol did not, in fact, provide the correct reasoning for the answer, a point pressed by the Student in argument, as will be outlined below.

[12] Professor Catherine Seguin testified about a meeting she had with the Student about the alleged academic offence. The University also called Alexandra De Blasio who attended that meeting, and Lucy Gaspini who interacted with the Student at the end of that

meeting. None of this evidence touched directly on the issues the Panel had to decide, and the Panel did not rely on the testimony of any of these witnesses.

[13] The Student testified in her own defence. She stated that she made notes on the examination paper in the classroom on the day the test paper was returned to her. She said that there was a person who sat beside her that day in the classroom named X[redacted] C[redacted] who saw her make the marks. The Student indicated that at the time she made the notes, she did not want to ask for the paper to be re-marked. She knew that her mark was very low and considered giving up the course, but then got information that re-marking would help her. In the interval between the time she made the notes on the day that the test was returned to her and the day she gave the test in for re-marking, she states that she completely forgot that she had made notes on the paper.

[14] There was much evidence about the mu↑ symbol added to page 3 of the test paper. The Student testified that the fact that she could not get marks for it proved that she did not add the symbol with the intention of getting extra marks. However, the Panel notes that the Student did indeed seek extra marks for that notation, as evidenced by her cover letter of the re-marked test (Exhibit 10). She acknowledged that she had signed the Course Syllabus Acknowledgement Form and knew that she could not alter the term test before submitting it for re-marking. Her evidence was that she did not realize that it was an offence at the time that she gave the test to Professor Yu because she had completely forgotten that she made the two notations. The Student testified in cross-examination that during the time she made the marks on the paper, she did not compare her markings to the solutions that had been provided; rather, she just "followed her previous opinion". She agreed that she had seen the solutions by the time she made the marks, but said she had not yet seen the marking scheme. Her explanation for adding the mu↑ was that she did not know if it was right but she was making random notes "without any intention". In her view, these notes re-confirmed her previous opinion, indeed, her previous wrong opinion. She maintained throughout her evidence that the marks were made randomly and with no intention to ask for a re-marking.

[15] A word should be said about language issues at the hearing. At the end of the Student's testimony on April 7, 2016, her representative asked that the Student be permitted to testify with an interpreter. The Student, however, had certainly made herself understood to the Panel throughout her evidence. The Panel also notes that the Student is a third year student at the University, where courses are taught in English, and found that she had sufficient proficiency to respond to questions and be well understood by the Panel. She was responsive to questions asked of her, and the Panel, having had the opportunity to observe her, believed that she understood those questions and was able to fully participate in the proceedings.

[16] The Student called three other witnesses on her behalf, all of whom made some use of an interpreter during their evidence. Y[redacted] I[redacted] testified that he had known the Student for several years, and that at the time of the Dean's meeting the Student was very upset and crying and told him that she had done nothing wrong.

[17] X[redacted] C[redacted] testified. She was in the class with the Student and took the test with her. Ms. C[redacted] said that she sat in the first row and saw the Student writing something on the day the tests were returned, although she did not know the content of what was written. She and the Student left together and went to the bus stop and talked about whether to re-mark the paper, at which point the Student said she did not want to have the paper re-marked but did not say why. The Student did not tell Ms. C[redacted] whether she had the paper re-marked. Ms. C[redacted] testified in re-examination, through the use of an interpreter, that although she did not see what the Student was writing, she did see that she was writing on the test paper.

[18] Ms. E[redacted] J[redacted] I[redacted] also testified, and said that on her way to the bus stop with the Student and Ms. C[redacted], they talked about whether their papers would be submitted for re-marking and all three of them said they were not going to do so. She confirmed that Profession Yu encouraged the class to submit them for re-marking and because she herself had received a very low mark she wanted to re-mark it. Ultimately, she and the Student went together to Professor Yu's office and submitted their papers for re-marking. However, Ms. J[redacted]'s was not accepted because she did not follow the required protocol set out in the syllabus.

The Finding

[19] The Panel found there was no doubt that the Student made the marks on the paper, as she in fact acknowledged she had done, and that at the very least she ought to have known that she had altered a document, or circulated or made use of such altered document, contrary to section B.I.1.(a) of the *Code*. The offence requires that the altered document be required by the University and the Panel accepts that the term test was required by the University. The Student's representative urged us to find that, given that the re-marking was voluntary, the test was not "required" within the meaning of the provision. In the Panel's view, this is too narrow a reading of the provision. The test itself was a required element of the course. Whether it was being marked on an initial basis or a re-marked basis does not change its nature as a course requirement.

[20] Further, the Panel concluded that it was more likely than not that the Student knew that she had made changes to the paper. The Committee finds, on the basis of clear, cogent and convincing evidence, that the Student made the marks on the paper believing them to be correct. The Student argued that the mu↑ was not correct, therefore she could not have made it for the purpose of receiving marks, and her position that it was random and unintentional was supported. However, page 1 of Exhibit 10 reveals that she specifically referred to the mu↑ when seeking further marks for the question in issue. Irrespective of whether Professor Yu thought it was correct, it is clear that the Student thought it was. The Panel therefore does not accept her explanation that these were random notes put on the page re-confirming her previous opinion. With respect to the crossing out of the incorrect answer on page 5, the Panel notes that, after having seen the solutions, the Student crossed out the wrong answer, leaving her earlier answer, which she now knew to be the correct answer. Again, the Student specifically referred to this answer in her cover sheet as a basis for which she should be awarded more marks. Therefore, again, the Panel does not accept that this was a random act. The Panel does not accept that these two

alterations, which were specifically referred to in the cover letter seeking increased marks, were done randomly, nor does the Panel accept that the Student had forgotten about them by the time she sought a re-mark. The Panel notes that the Student, in her evidence, did not mention any walk to the bus or discussion with Ms. C[redacted] or Ms. J[redacted]. The Panel notes that the absolute maximum amount of time that could have passed between the time the test was returned to the Student and the time she sought a re-mark was nine days and the Panel does not accept that changes of this nature, which had a bearing on her mark, were forgotten by the Student in this time period.

[21] For these reasons, the Panel found that the first charge was proven. The University withdrew charges 2 and 3.

Penalty

[22] The Panel, having made its finding, reconvened on June 29 for the penalty portion of the hearing. Prior to reconvening, the Chair was advised that Ms. Lin wished to re-open the hearing and have the Panel re-consider its decision. The Chair asked the parties to come prepared to deal with that issue at the outset of the proceeding on June 29th.

[23] Ms Lin relied upon section 21.2(1) of the *Statutory Powers Procedure Act* as authority for the proposition that the Panel could re-consider its decision. That provision provides that a tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order. Ms. Lin relied on Human Rights Tribunal case law in support of her submission that the Panel had the authority to re-open the case.

[24] In the Panel's view, section 21.2(1) does not assist the Student. The University Tribunal has no rules made under section 25.1 of the SPPA that allow it to review its own decision or order. Ms. Lin indicated to the Panel that she wished to re-open the matter to bring forth issues of procedural fairness, particularly in respect of how the Student was treated by Professor Yu and Professor Seguin prior to the matter being brought before the Tribunal. No procedural irregularities at the Tribunal were suggested.

[25] The Panel is of the view that the appropriate way for the Student to raise any issues she has with this matter would be in an appeal of its decision. The Panel ruled that it would not re-consider its decision or re-open the matter, and would proceed as scheduled with the sanction phase of the hearing.

[26] The University filed the Student's ROSI record as evidence at this stage. Ms. Lin asked to be excused at this stage as the Student's representative. Lengthy discussion ensued, in which the Student confirmed that she wished to have Ms. Lin excused from representing her, and wished to carry on by representing herself. After further lengthy discussion, the Student testified on her own behalf. She elected to use the services of the interpreter for her testimony at this stage.

[27] Through the interpreter, the Student testified that she had suffered so much through what she considered to be a careless action that the Panel could be certain she would never repeat such an action. She explained that she had gone to a physician who told her she had nerve pain, which would only be caused in a young person by extreme emotional stress. She explained that she did not have the physician's records with her, but would be able to obtain them if they were needed. No issue was made of this by the University or the Panel. The Student further testified that she had trouble sleeping in addition to feeling physically unwell.

[28] The Student also explained that she was working toward a double major in mathematics and economics, which was not easy, and was trying her best. She expressed regret for what had happened. She indicated that she was re-taking the course because she wanted to prove that she was able to do the course. However, in cross-examination she conceded that the course was a prerequisite for her major in economics. The Student was teary at times when giving her evidence and testified that she was punishing herself in her own way. Although she maintained that she did not intentionally perform the misconduct, she did acknowledge that she had been careless and that she had learned her lesson the hard way.

[29] The Student described her life as an overseas student. She indicated that she does not come from a wealthy family and her parents had sacrificed a great deal to send her to the University of Toronto. They are hard-working people who save every penny to help her. She told the Panel that even though some of her friends had transferred out of UTM because of how difficult they believed the courses are, she chose to stay because she felt she had an obligation to finish her studies and not waste her parents' money. She described feeling lonely, not having many friends at UTM, and finding it difficult to have her parents so far away. She said that going through this whole procedure on her own had been very difficult.

[30] In its submissions, the University sought a penalty of a final grade of 0 in the course, a 2-year suspension from the University and a 3-year notation on the Student's transcript, with the decision reported to the Provost who may publish it with the Student's name withheld. As the Student is enrolled in a summer course, the University agreed that her suspension should commence on September 1, 2016.

[31] The University relied upon a recent case involving the very same course and the very same test (*The University of Toronto v C[redacted] S[redacted]*, (Case #824, June 15, 2016). The penalty in that case was identical to the one the University sought here. However, the Panel notes the following significant differences between the cases:

(1) In S[redacted], the student did not participate or attend at the hearing. There was thus no information or evidence available from the student, either to explain the actions or to provide a picture of any mitigating circumstances that might exist.

(2) In S[redacted] the student had made "significant and obvious alterations to his test, to correct some fundamental errors that he had made. He also made certain

additions". Later, the Panel noted "the alteration of the paper was obvious". This differs from the case at hand. Not to diminish the Student's conduct, the Panel does note that the alterations consisted of the addition of one symbol (the mu↑) and the crossing out of a portion of an answer that was incorrect.

(3) As indicated, there was no mitigating information from the student in S[redacted]. In this case, the Student provided the Panel with a picture of a student who, while, in the Panel's view, understated her degree of knowledge in respect of the offence committed, undoubtedly had felt a significant impact of going through this proceeding and was visibly shaken by the entire experience. She also provided the Panel with a picture of her personal circumstances in being far from home, with pressure to succeed in a foreign environment in which she was often lonely and had very little in the way of support.

[32] The Panel took into account these mitigating circumstances and was of the view that its glimpse into the character of the Student provided some comfort that the conduct would not be repeated, that there was a degree of remorse and that the Student took the proceedings and the fall-out from her actions seriously. In addition, this was the Student's first offence. On the other side of the equation, of course, is the serious nature of the misconduct. Any form of cheating is a significant blow to the integrity of the University and its other students who behave with honesty and integrity, in accordance with the *Code* . It is important that infringements of the *Code* be dealt with in a manner that achieves not just specific, but also general deterrence. The steps taken by Professor Yu to inhibit cheating while providing opportunities to her students to learn and be marked fairly and consistently bordered on extraordinary. Not only did she give clear and specific warnings to her students, she went so far as to scan original tests, which enabled her to help her students by allowing them to re-submit tests if they felt they were marked improperly. It is most disheartening to find that such extensive steps have become necessary and further, that they are apparently insufficient to stop some students from cheating. It would be most unfortunate if continued cheating in the face of these steps were to result in the loss of opportunity for re-marking for the vast majority of students who do not abuse it. Thus, while the Student sought more leniency and seemed to suggest that she had learned her lesson and no further punishment was required, such an outcome would obviously be wholly inadequate in the circumstances.

[33] Given all of the factors above, the Panel ordered:

1. **THAT** the Student receive a final grade of zero in ECO202Y5Y in Fall 2014;

2. **THAT** the Student be suspended from the University for a period of one year, commencing on September 1, 2016 and ending on August 31, 2017;

3. **THAT** the sanction be recorded on the Student's academic record and transcript to the effect that she was sanctioned for academic misconduct, for a period of two years from September 1, 2016 to August 31, 2018, and

4. **THAT** this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed, with the name of the Student withheld.

Dated this 27th day of July, 2016.

Lisa Brownstone, Co-Chair