

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on May 25, 2016,

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 -

HIN TUNG (HENERETTA) LEE

DECISION AND REASONS FOR DECISION

Hearing Date: February 21, 2017

Members of the Panel:

Ms. Johanna Braden, Barrister and Solicitor, Chair
Professor Faye Mishna, Faculty Panel Member
Mr. Eric Bryce, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland, Barristers
Ms. Eva Mak, Barrister and Solicitor, Counsel for the Student
Dr. Martha Harris, former Academic Integrity Officer, Office of Student Academic Integrity, Faculty of Arts and Science
Ms. Hin Tung (Heneretta) Lee, the Student

In Attendance:

Ms. Tracey Gameiro, Associate Director, Office of Appeals, Discipline and Faculty Grievances
Mr. Sean Lourim, Technology Assistant, Office of the Governing Council

1. The Trial Division of the University Tribunal was convened on February 21, 2017, to consider charges brought by the University of Toronto ("the University") against Ms. Hin Tung (Heneretta) Lee ("the Student") under the *University of Toronto Code of Behaviour on Academic Matters*, 1995 ("the Code").

The Charges and Particulars

2. The Charges and Particulars alleged against the Student are as follows.

A. Charges

1. On or about December 21, 2015, you knowingly forged, or in any other way altered or falsified a document or evidence required by the University, namely, a document titled "Final Exam MAT223H1F", and/or you knowingly uttered, circulated or made use of such forged, altered and falsified document in connection with the final exam in MAT223H1F, contrary to section B.I.1(a) of the *Code*.

2. On or about December 21, 2015, you knowingly used or possessed an unauthorized aid or obtained unauthorized assistance in connection with the final exam in MAT223H1F, contrary to section B.I.1(b) of the *Code*.

3. In the alternative, on or about December 21, 2015, 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 exam in MAT223H1F, contrary to section B.I.3(b) of the *Code*.

B. Particulars

The particulars related to charges 1 to 3 are as follows:

- (a) At all material times, you were a registered student at the University of Toronto. In the Fall 2015 term you enrolled in MAT223H1F (the "Course").

(b) Students in the Course were required to write a final exam on December 21, 2015 ("Exam"). You attended the Exam on that date.

(c) You did not write the Exam; instead, you knowingly and surreptitiously brought a document titled "Final Exam MAT223H1F Linear Algebra I" ("Lee Exam") to the Exam and submitted that document as your exam paper for academic credit in the Course as if it was the Exam.

(d) The Lee Exam was not the same as the Exam, but rather consisted of an amalgam of questions from previous exams written in past terms in the Course.

(e) You knowingly forged, altered and falsified the Lee Exam, or had someone do so on your behalf, in order to bring the Lee Exam into the exam room on December 21, 2015; you did so to use and possess the Lee Exam as an unauthorized aid to assist you to obtain an academic advantage in the Exam.

The Student's Position

3. The Student was present and represented by counsel. The Student denied the charges. The hearing proceeded on the basis that the University bore the burden of proving the charges on the balance of probabilities.

Overview

4. In the Fall 2015 term, the University offered a course in Linear Algebra I (the "Course"). The Course had approximately 1,500 students. There was a final exam worth 40% of the Course grade. The final exams were marked by the seven Course instructors. While marking the final exams, one of the Course instructors noticed that one of the exams was different than all the others. It was different in texture and appearance, the language used on the front instruction

page was different and – most significantly – the questions were different. The different exam had been submitted by the Student.

5. At the hearing, the Student admitted that the exam she submitted was different than the exam written by all the other students in the Course. However, she maintained that she simply attended the final examination, wrote the exam that had been placed on the desk before her, and turned it in. She said she had no knowledge as to how or why her exam was different from all the others. Her position was that someone else must have tampered with the exams somehow. The Student testified that she learned only after-the-fact that the Course exam was different than the one she wrote. She said that the University could not prove that she had knowingly written a falsified exam.
6. Having deliberated carefully, and having considered all the evidence, the Tribunal finds that the evidence is sufficiently clear, cogent and convincing to discharge the burden of proof on the University and find that the Student has committed academic misconduct.

The Evidence

7. The University tendered the evidence of six witnesses: Beverly Lewis, the Examinations Supervisor with knowledge of the process for the assembly, printing and delivery of the Course exam; Professor Mary Pugh, the Associate Chair for the University's Mathematics Department; Haggai Nuchi, a Course instructor and one of the exam invigilators whose evidence was presented through affidavit; Max Klambauer, the second exam invigilator; Trefor Bazett, the Course instructor who first discovered the discrepancies and whose evidence was submitted through affidavit; and Dr. Martha Harris, who testified about events that transpired with the Student after the exam was written. The Student testified on her own behalf. A summary of the most relevant evidence is as follows.

(a) The Student

8. The Student began her post-secondary education at the International College of Manitoba, where she took Grade 12 courses and some university-level courses. She had a grade average of 4.3 out of 4.5. She then transferred to the Faculty of Arts and Science at the University. Her first term at the University was the Fall of 2015. She intends to switch her major from Sexual Diversity to Criminology, and hopes to graduate in April of 2018.
9. The Course was an elective for the Student. It aligned with her interests, and she had done very well on an algebra course at the International College of Manitoba. The Student took the Course on a Credit/No Credit basis, meaning that her transcript would not reflect a course grade but would only show whether she passed or not. She testified that her goal was only to pass the Course, and not necessarily to do well in the Course. Going into the final exam, her grade was around 48%. The Student's understanding, supported by the mark breakdown in the Course syllabus, was that if the Student passed the exam with a grade of 50%, she would pass the Course and obtain a Credit notation on her transcript.

(b) The Course and the Exam

10. The Course is the first Linear Algebra course that undergraduate University students can take. Typically about 1,600 students enroll in the Course, and about 1,300 remain in the Course. The Course was taught by seven instructors, including the Course Coordinator, Professor Uppal. Professor Uppal was unable to testify at the hearing. Evidence about the Course and the final examination came from other witnesses with knowledge of the matters.

11. Professor Uppal was ultimately responsible for writing the questions for the final exam. By way of email dated November 23, 2015, Professor Uppal sent a draft of the final exam to the other Course instructors, seeking their input. The covering email warned the other Course instructors: "Guard it with your life!" The protocol in place in the department was that once the final version of the exam was ready, it was to be given to the Associate Chair for the Mathematics Department, Professor Mary Pugh. Professor Pugh did not specifically recall reviewing the Course exam in advance of the examination, but she believed that Professor Uppal would have followed the standard protocol and sent it to her in advance.
12. Beverly Lewis has been the Examinations Supervisor at the Faculty of Arts and Science Office of the Faculty Registrar and University Transcript Centre since at least 1987. She gave evidence that the usual procedure for examinations is as follows.
 - (a) The Exams Office receives final examinations delivered by each department. The Mathematics Department asks the Exams Office staff to sign for any exams they deliver to the Exams Office for their own records.
 - (b) The Exams Office places an order with the University printer for the number of exams required for each exam. The University printer is a private company that has offices on the University campus and that primarily services the University.
 - (c) The Exams Office hand delivers the exam to the University printer, which is in the same building as the Exams Office.
 - (d) The University printer hand delivers the printed exams to the Exams Office in sealed boxes.

- (e) Exams Office staff organize the sealed boxes and open boxes to remove any exams required for students who are writing an exam at an alternate location, such as AccessAbility Services. Once any required exams are removed from a box, the box is closed. Exams Office staff all sign a confidentiality policy.
 - (f) Exams are kept in a locked storage room or vault in the Exams Office. The Exams Office has a security system. Exams are removed from the vault just before they are transported to the exam location.
 - (g) In instances of smaller exams, the Chief Presiding Officer for the exam will pick up the printed exams from the locked storage room and hand deliver the exams to the exam room. In instances of larger exams, such as the Course Exam, the University's Facility Services department will deliver the exams from the locked storage room to the exam rooms, or to other locked storage rooms.
13. As to the Course exam specifically, Ms. Lewis testified that the Registrar's office placed an order with the University printer on December 9, 2015 for 1,524 exams. It would typically take somewhere between two days and one week for the printed exams to then be delivered by the University printer to the Exams Office. Although she did not recall the Course exam specifically, she believes that the usual protocol would have been followed. In light of the number of examination papers for the Course, they probably would have been delivered to the examination rooms by University campus security personnel. She believes the printed exams would have been in sealed boxes, although she cannot recall this exam specifically.
14. The Course exam was written on December 21, 2015. Course students were divided into different examination rooms depending on their last name. The room where the Student wrote the Course exam had about 200 other students present.

15. The December, 2015 exam period was the start of a pilot project where students were allowed to bring their coats and bags with them to their desks while writing their exam to avoid theft and loss. The Student was aware prior to writing the Course exam that she would be allowed to have her belongings with her at her desk.
16. In the room where the Student wrote the Course exam on December 21, 2015, there were two invigilators and a Chief Presiding Officer. Nothing was permitted on any desks other than pencils, pens and a pencil case (which would generally be checked). Coats were mostly hung on the backs of students' seats, and coats were not checked. Students had their bags with them at their desks, and bags were not checked.
17. The two exam invigilators gave evidence at the hearing, one in person and one through affidavit. They both gave evidence that the exam appeared uneventful and nothing out of the ordinary took place that they saw. The evidence of the two invigilators differed in minor respects. Mr. Klambauer testified that when he arrived at the examination room, the exams were already on the students' desks. Professor Nuchi recalled that he and Mr. Klambauer put the exams on the students' desks together. Once the exam was over, both invigilators agreed that the exams were physically counted to ensure that the correct number had been collected. Mr. Klambauer recalls that, after the count was completed, Professor Nuchi took custody of the exams and left the examination room. Professor Nuchi's evidence was that he and Mr. Klambauer both took the completed examinations to Professor Uppal's office.
18. In any event, there is no debate that the completed exams were counted, were delivered to Professor Uppal, and were distributed among the seven Course instructors for marking. Each Course instructor was assigned a different question to mark across all exams.

(c) The Differences in the Two Exams

19. Professor Bazett was the first instructor to mark the Student's exam. He quickly noticed it was not like the others.
20. It is obvious that the exam the Student wrote (the "Student's Exam") was not the exam prepared by Professor Uppal for the Course, and was not the exam that the other 1,500-plus students wrote (the "Course Exam"). For example:
 - (a) The print and font are different.
 - (b) The front page of the Course Exam is different in multiple ways from the front page of the Student's Exam, including the date ("December 2015" versus "December 21, 2015"), the duration ("3 hours" versus "180 minutes") and the details of the instructions given.
 - (c) The Course Exam is 13 pages, with 74 possible marks. The Student's Exam is 12 pages, with 75 possible marks.
 - (d) Most notably, the questions are different.
21. Professor Bazett's evidence was that, while the questions on the Student's Exam were clearly not those used on the Course Exam, they were reasonable questions that could have been on the exam. He and Professor Uppal reviewed some of the past exams given in previous terms of the Course that were available online. They noticed that the questions in the Student's Exam matched questions from some of those past exams. Copies of past exams were part of the record before the Tribunal, and they show as follows.
 - (a) In many respects, the front page of the Student's Exam resembles the front page of the April 2015 exam.

- (b) Questions 1, 2, 3 from Part 1 and questions 2 and 5 from Part 2 were the same as questions from the April 2015 exam.
 - (c) Questions 4-10 from Part 1 and question 6 from Part 2 were the same as questions from the December 2014 exam.
 - (d) Questions 1, 3 and 4 from Part 1 were the same as questions from the June 2015 exam.
22. In other words, it is clear that the Student's Exam was a carefully crafted fabrication, deliberately designed to resemble a real Course exam without being a real Course exam. Professor Pugh called it a "Franken-exam" – one created by cobbling together different parts of old exams. A typo from one of the old exams was carried over in the Student's Exam ("subsapce" instead of "subspace"), suggesting that the Student's Exam had been made through a "cut and paste" of old exams.
23. The Student's Exam was graded. Had it been the actual Course Exam, she would have received 58 out of 75 marks, or 77%.

(d) The Student's Explanation

24. Everyone agreed this was a highly unusual case. Ms. Lewis, who has worked in the Exams Office since 1984, was not aware of another instance in the last 30 years where a student attending a final exam received an exam paper that was different from the exam written by all of the other students in a course.
25. The Student was asked to meet with Professor Pugh. Professor Pugh testified that she was expecting the Student to admit to some form of academic misconduct, because she couldn't fathom how this could have happened otherwise. Professor Pugh was sufficiently alarmed by the unusual nature of this case that she had someone from the University's Student Crisis team attend the

meeting, to provide support to the Student if needed. The Student did not admit to any misconduct, and said that she had simply written the examination that was on the desk in front of her. She explained the marked improvement in her grade on the final exam compared to the midterm exams was because she had studied hard for the final exam.

26. The Student's evidence at the hearing was that she had been disappointed in her midterm marks for the Course, but wasn't especially worried because she only needed to pass to get the Credit notation on her transcript. She knew she didn't need to get much more than 50% on her final exam to pass the Course.
27. The Student said she studied for the final exam for about 12 hours the day before the exam, and that was all. She did not study with anyone else. She did not look at past exams as part of her studying. She did not give details of what her 12 hours of studying involved.
28. The Student testified that on the day of the exam, she went to her assigned examination room, sat down at a desk where an examination was waiting for her, took out her pencil case, hung up her jacket, and wrote the exam. She had no idea the exam she wrote was not the same as all the others. She still has no idea how that came to pass. She has never cheated, neither before nor since. She was told that sanctions for students who admitted misconduct at a meeting with the Dean's Designate were typically more lenient than sanctions imposed by this Tribunal following findings of academic misconduct, but still she did not admit to having done anything wrong because, in her view, she hadn't.

Decision and Reasons for Decision of the Tribunal on the Charges

29. The onus is on the University to establish on the balance of probabilities, using clear and convincing evidence, that one or more of the academic offences charged has been committed by the Student. Counsel for the University submitted that there was ample evidence for the Tribunal to find that the Student

was guilty of one or more of the charges. Counsel for the Student submitted that the evidence was simply insufficient to sustain such a serious allegation, particularly given the Student's denial.

30. There was no issue that the Student's Exam was not the Course Exam. Somehow, out of more than 1,500 examination papers handed out on December 21, 2015, one examination paper was a carefully doctored fabrication. This could not be an administrative error. This was not a case where the wrong exam simply made its way to the wrong desk in an examination room. If the Student's Exam had been an exact replica of a previous examination, or had been an examination for a different course entirely, then administrative error might have been one possibility. But this was a deliberately fabricated document, intentionally masquerading as the Course Exam.
31. The Student's counsel submitted that it was not for the Student to explain how the fake examination came to be on her desk. This is true, and the University bears the burden of proof throughout. But the Tribunal is entitled to draw inferences from proven facts. Based on the proven facts, there are really only two possibilities. One is that the Student brought the fake examination into the room herself. The other possibility is that some unknown person decided for some unknown reason to concoct a fake examination paper, bypassed the security measures in place, and managed to sneak that fake examination into the more than 1,500 real examinations where it would be written by some unsuspecting random student. Under this second possibility, the Student is just the innocent victim of someone else's bizarre prank.
32. If both scenarios were equally likely, the University would not be able to prove its case. However, the Tribunal finds that one scenario is manifestly more likely than not. The prospect of someone else having fabricated the exam and placed it in advance into the large pile of real exams is remote and fanciful. The security for the examinations was not perfect, in that various people had access to the examinations at different times. Someone working for the University printer could

have snuck the fake examination into the stack of printed exams before they were delivered to the University. Someone working at the University as a cleaner or a chief presiding officer or in the Exams Office could have accessed the printed examinations after they were delivered to the locked room and removed one real exam and replaced it with the fake one. Someone transporting the examinations from the locked room to the examination room could also have done this. But the prospect of the fake examination making its way to the Student's desk by anyone's hand other than the Student's is simply not realistic. Of all the possible explanations, the only one that is more likely than not is that the Student brought the fake examination paper with her when she wrote the exam on December 21, 2015. As students were allowed to have their coats, bags and other belongings at their desk (something the Student was aware she would be allowed to do), it would not have been too difficult for her to swap the real examination for the fake one.

33. The Tribunal is mindful that in coming to this conclusion, we have disbelieved the evidence the Student gave at the hearing under solemn affirmation. In evaluating the Student's credibility, the Tribunal found that her evidence was not always consistent or clear. For example, the Student gave different reasons as to why she said she did not look at past examinations as part of her 12 hours of studying.
- (a) At one point the Student said she didn't bother to look at old exams because she only cared if she passed the Course or not. This is at odds with her telling Professor Pugh that the reason she'd done so well on the final exam was that she'd studied hard.
 - (b) At another point she testified that Professor Uppal had said that studying past exams would not be useful because the course syllabus had changed. She could not explain why she did so well answering questions that had been taken from three different past exams, if the course content

for the Course she had studied for was so different from what had been taught in past years.

- (c) The Student also said that Professor Uppal wouldn't provide past exams to the class. This does not fit with the evidence that past exams are available online, and did not need to be "provided" by any particular professor.

- 34. These inconsistencies undermined the Student's credibility. Primarily, however, the Tribunal's assessment of the Student's credibility rests on the essential implausibility of the idea that anyone other than the Student would have smuggled the fake examination into the examination room.

The Charges

- 35. For the reasons given above, the Tribunal finds that, on or about December 21, 2015, the Student knowingly used or possessed an unauthorized aid and obtained unauthorized assistance in connection with the final exam in MAT223H1F, contrary to section B.I.1(b) of the *Code*, as alleged in Charge 2.
- 49. Charge 1 is somewhat more complicated. It alleges that the Student knowingly forged, or in any other way altered or falsified the exam, and/or that the Student knowingly uttered, circulated or made use of such forged, altered or falsified document. There is no evidence that the Student herself created the fake examination. The Student certainly "uttered, circulated or made use" of the fake examination by submitting it to be marked. The issue for Charge 1 is whether the Student knew or ought reasonably to have known that the exam she submitted was a fabrication rather than the actual examination.
- 50. The Panel considered the possibility that the Student obtained the fake examination from someone else and believed she had obtained the actual Course examination in advance of the exam. It is possible she reasonably

believed she had been able to get an actual copy of the Course examination. Certainly someone went to considerable trouble to make the fake exam look like a real one.

51. If the Student actually believed the exam she obtained in advance was the real Course exam, it is hard to understand why the Student would have brought the examination into the exam room with her, where she risked the possibility of being caught when she exchanged exams. On the other hand, it is hard to understand how any student could submit an exam she knows to be fabricated, and not expect to be caught. This is one of those cases where the Tribunal will never know what really happened. On the evidence led, the Tribunal cannot say it is more likely than not that the Student knew or ought reasonably to have known that the exam she submitted was a forgery. Charge 1 will be dismissed.
52. That the Tribunal is dismissing Charge 1 is not to the Student's credit. Whether she wrongly believed that she had obtained an advance copy of the real exam, or whether she knowingly submitted a fake exam, her culpability does not change. It is cheating either way.
53. Counsel for the University indicated that if the Tribunal made a finding on either Charge 1 or Charge 2, the University would seek to withdraw Charge 3, which is alleged in the alternative.
54. The Tribunal will convene as soon as reasonably possible for the penalty hearing.

Dated at Toronto this 1st day of May, 2017



Jolanna Braden