

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on March 10, 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 -

Y■■■■ Y■■■■

REASONS FOR DECISION

Hearing Date: July 8, 2016

Members of the Panel:

Ms. Johanna Braden, Barrister and Solicitor, Chair

Professor Michael Evans, Faculty Panel Member

Ms. Yusra Qazi, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland, Barristers

Mr. Peter Wuebbolt, Barrister and Solicitor, Counsel for the Student

Dr. Martha Harris, Academic Integrity Officer, Office of Student Academic Integrity,
Faculty of Arts and Science

Dr. Kieran Furlong, Sessional Lecturer, Department of Economics, University of Toronto

Mr. Mathieu Gilbert-Gonthier, Invigilator of ECO100Y Exam

Mr. Remi Daviet, Invigilator of ECO100Y Exam

Ms. Tanya Battersby, Chief Presiding Officer of ECO100Y Exam

Ms. Y■■■■ Y■■■■, the Student

In Attendance:

Ms. Krista Osborne, Administrative Assistant, Office of Appeals, Discipline and Faculty
Grievances

Mr. Simon Raposo (Observer)

Ms. W■■■■ Z■■■■ (Mother of the Student)

1. The Trial Division of the University Tribunal was convened on July 8, 2016, to consider charges brought by the University of Toronto ("the University") against Ms. Y■■■■ Y■■■■ ("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 August 11, 2015, you knowingly obtained unauthorized assistance to complete the final deferred examination (the "Exam") for academic credit in ECO100Y1: Introduction to Economics (the "Course"), contrary to section B.I.1(b) of the *Code*.

2. In the alternative, on or about August 11, 2015, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code* in connection with the Exam in order to obtain an academic advantage in the Course, contrary to section B.I.3(b) of the *Code*.

B. Particulars

The particulars of these charges are as follows:

- (a) At all material times, you were a registered student at the University of Toronto, Faculty of Arts and Science.
- (b) In the Winter 2014-2015 term, you enrolled in the Course, which was taught by Professor Kieran Furlong.

- (c) Students in the Course were required to complete a final examination for academic credit in the Course. On or about August 11, 2015, you attended and wrote the Exam to satisfy this requirement.
- (d) You knowingly received unauthorized assistance to complete the multiple choice portion of the Exam by viewing and/or copying answers from the student sitting next to you.
- (e) You knew, or ought to have known, that you were not permitted to view and/or copy the answers of the student sitting next to you, or to otherwise receive unauthorized assistance to complete the Exam.
- (f) By viewing and/or copying answers from the student sitting next to you, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain an academic advantage in the Course.

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. The Student was writing a deferred final exam for her Introduction to Economics course. The exam was invigilated by PhD students. The first part of the examination asked 50 multiple choice questions. Each question had five possible responses.

5. One exam invigilator noticed the Student looking at the exam of the student next to her, M.W.. He asked another invigilator to keep an eye out for suspicious behavior. The second invigilator saw the Student moving her eyes so as to look at M.W.'s exam. The two invigilators reported their concerns to the exam's Chief Presiding Officer. The Chief Presiding Officer moved the Student to a different desk to finish writing her examination. When she was moved, the Student had completed about 25-30 of the exam's 50 multiple choice questions.
6. When the Student's finished examination was marked and compared with the examination of M.W., there was a marked similarity between the answers given for the first 30 multiple choice questions. They gave the same answer for 25 of the first 30 questions. Of these 25 same answers, 13 were the correct answer. The Student and M.W. both gave the same incorrect answer 12 times.
7. For questions 30 – 50 (answered by the Student after she'd been separated from M.W.), the Student and M.W. answered only two questions the same way. Both answers were incorrect.
8. The University says the evidence proves that the Student obtained unauthorized assistance by copying M.W.'s exam. The Student testified on her own behalf and denied that she copied. 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. It is more likely than not that the Student copied the examination answers of M.W. and thereby knowingly obtained unauthorized assistance to complete the exam.

The Evidence

9. The University called four witnesses: Dr. Kieran Furlong, who taught the course in question; the two invigilators who witnessed the Student's behavior during the exam, Mathieu Gilbert-Gonthier and Remi Daviet; and the Chief Presiding Officer

at the exam, Tanya Battersby. The Student testified on her own behalf. A summary of the evidence is as follows.

(a) Writing The Exam

10. The Student is in her third year at the University, and Introduction to Economics is a required course for her. She was unable to write the second term test and the final exam because of illness. She received permission from the University to write the deferred examination in place of both missed tests, and the deferred examination would then account for 62.5% of her final grade for the course.
11. The deferred exam took place on August 11, 2015 at the University's Exam Centre. The examination room was the largest exam room on campus, with a capacity to seat at least 300 students. Individual desks were arranged in rows, all facing the front of the room. There was at least one clock in the room, but the clock or clocks could be hard for some students to see, as there were columns blocking the view. Accordingly, the exam invigilators would write down the amount of time remaining in the exam on the boards at the front of the room, updating the time at least every 15-20 minutes during the 3-hour exam.
12. The examination on August 11 was a final examination for students who had taken the summer session of Introduction to Economics, and a deferred final examination for students who had taken the winter session of Introduction to Economics. The course instructor for both the winter and summer sessions was Dr. Furlong. He was at the exam for the first 10-15 minutes, but then left. The exam was invigilated by PhD students who had been his Teaching Assistants.
13. The Student claims she arrived at the exam a little late, as she hadn't known where it was. Everyone else was seated when she arrived and there were not many desks left. She says she asked an invigilator where to sit, and he pointed her to the section of the room for students taking the Introduction to Economics exam. She sat at one of the few empty seats. At the time she did not know the

person sitting next to her. She says she never met M.W. before these events. M.W. was a student in the summer session of Introduction to Economics, meaning that she and the Student had taken the course at different times.

14. The exam began at 7 pm. One invigilator, Mr. Gilbert-Gonthier, testified that he walked up and down the aisles, looking at students as he did so. Neither the Student nor M.W. were known to him before this event, and he had no reason to single them out or notice them particularly.
15. About 50 minutes after the exam started, Mr. Gilbert-Gonthier was walking slowly from the front of the room to the back of the room between two rows of desks when he noticed one student look straight at the exam of the student next to her. The student who "peeked" was on his right, and the student whose exam was being peeked at was on his left. At the hearing, he was able to identify the peeking student as the Student. He testified that it was "pretty obvious" to him at the time that the Student was looking at M.W.'s desk, rather than up or down at something different. He said he could see her eyes and face very clearly. M.W.'s examination was placed in a way that would have made it easy for the Student to see it. The "peek" was not a quick one, and lasted 3-4 seconds.
16. Mr. Gilbert-Gonthier continued to walk slowly toward the back of the room. Consistent with his invigilator training, he did not interact with the students as he did not want them to know that he'd seen something suspicious. At the back of the room he spoke with another invigilator, Mr. Daviet. Mr. Gilbert-Gonthier told Mr. Daviet that there were two students acting suspiciously, and asked Mr. Daviet to see if he could spot anything. He says he witnessed Mr. Daviet move forward and set up watch slightly behind the students. After a few minutes, Mr. Daviet went to Mr. Gilbert-Gonthier and said he had witnessed one student looking at her neighbour's exam. The two invigilators went to the Chief Presiding Officer at the exam and told her what they had seen. The Chief Presiding Officer separated the students by moving one of them.

17. After the exam was over, Mr. Gilbert-Gonthier filled out an Alleged Academic Misconduct Report Form. His report includes a diagram that is consistent with his oral evidence in that it identifies the Student as sitting to his right, and M.W. as sitting to his left. However, in his report he writes that he saw M.W. slightly lean toward and peek at the Student's exam, which is the opposite of his evidence at the hearing. In his testimony, Mr. Gilbert-Gonthier said that he mixed-up the two students' names in the written portion of his report. He had not known their names prior to the exam, this was his first time filling out this kind of report, and he made a mistake. He testified that the Student and M.W. do not look alike, and that the Student (whom he identified at the hearing) was the one he saw peeking.
18. Mr. Daviet also testified. Like Mr. Gilbert-Gonthier, he was a PhD student in Economics and a Teaching Assistant for Dr. Furlong. He is an experienced exam invigilator.
19. Mr. Daviet recalled that during the exam, he was approached by Mr. Gilbert-Gonthier, who said that he'd seen something suspicious, and who asked Mr. Daviet to keep an eye on two students. He said he walked to a spot about two tables in front of the two students, so that he was in front of one of the students and diagonally across from the other student. He had not known either student prior to this episode.
20. Mr. Daviet testified that the student in front of him made eye movements, looking toward the paper of the student next to her. The student who was peeking kept her head fixed, moving only her eyes. Each eye movement lasted about two seconds. He witnessed this eye movement several times. The first time he saw it, he wasn't sure of what he had seen and he kept observing. After witnessing the same eye movement two or three more times in the next five to ten minutes, he concluded that the student was looking at her neighbor's exam. In between the eye movements, the student would write on her exam paper.

21. Mr. Daviet testified he did not think it was possible that the student was looking up, or that she was looking down at the floor. Her head was not moving, only her eyes. It was very clear to Mr. Daviet that she was looking at the other student's paper.
22. Mr. Daviet reported his concerns to the exam's Chief Presiding Officer. The Chief Presiding Officer asked Mr. Daviet to identify which student was the one he saw cheating. He pointed at the student he'd seen looking at the other's exam, and that student was then moved by the Chief Presiding Officer.
23. At the hearing, Mr. Daviet was unable to identify the Student. He said that today, all this time later, he would not be able to recognize the person he saw looking. However, he was confident that the person he identified as the cheater was the student who was moved during the exam, and after the student was moved he saw her student card which identified her as the Student. He looked at her exam paper, and believes the Student had completed somewhere between 20 and 35 of the multiple choice questions at the time she was moved.
24. After the exam, Mr. Daviet also filled out an Alleged Academic Misconduct Form. At the time he wrote his report, he had seen the students' identification cards and could put names to them. He wrote that he clearly saw the Student looking at M.W.'s sheet before writing each answer. His report includes a diagram. According to Mr. Daviet's diagram, if one were to look at the two students from the front of the room (which he says he did), the Student would be on the left, and M.W. would be on the right. This is the opposite of Mr. Gilbert-Gonthier's diagram.
25. Tanya Battersby was the Chief Presiding Officer at the exam. At approximately 8:15, she was advised by an exam invigilator that he and another invigilator had suspicions of misconduct involving two students. Her Alleged Academic Misconduct Report Form indicates she was told that the two students were "looking at one another's exams."

26. Ms. Battersby asked the Student to move. At the hearing, she could not specifically recall why she asked the Student to move, rather than M.W. She testified that the protocol was to move the student suspected to be involved in cheating, so she assumed that she moved the Student because the invigilators had identified her as the one they had concerns about. Ms. Battersby did not identify the Student at the hearing.
27. The final witness to testify about the writing of the exam was the Student. She testified that she sat at a desk as directed by one of the exam invigilators. To her left side there was a pillar, and to her right side was another student. She did not know the other student.
28. The Student admitted she was asked by Ms. Battersby to move desks about an hour after the exam started, when the Student had completed about half of the multiple choice questions. She did not know why she was asked to move. She denied having looked at any one else's exam. She said she did raise her head to look for a clock a few times.

(b) The Exam Results

29. Dr. Furlong was the course instructor. He knew the Student was in the Winter session of the Introduction to Economics course, and M.W. was in the Summer session, but he did not personally know either student.
30. He left the exam after the first 10 or 15 minutes. He was asked afterwards to mark and compare the exams of the Student and M.W. A summary of his analysis is as follows.
 - (a) For questions 1-10, M.W. and the Student gave the same answer for all ten questions. Six of these answers were correct, four were incorrect. For the four incorrect answers given by both the Student and M.W., the

percentage of other students who wrote the exam and gave the same incorrect answer ranged from 5.8% to 28.29%.

- (b) For questions 11-20, M.W. and the Student gave the same answer for five of the ten questions. Only one of these answers was correct. For the four incorrect answers given by both the Student and M.W., the percentage of other students who wrote the exam and gave the same incorrect answer ranged from 4.4% to 19.0%.
 - (c) For questions 21-30, M.W. and the Student gave the same answer for all ten of the questions. Only one was correct. For the nine incorrect answers given by both the Student and M.W., the percentage of other students who wrote the exam and gave the same incorrect answer ranged from 12.4% to 64.2%.
 - (d) For questions 31-40, M.W. and the Student gave the same answer for only one of the ten questions. It was incorrect. 26.3% of other students gave that same incorrect answer.
 - (e) For questions 41-50, M.W. and the Student gave the same answer for only one of the ten questions. It was incorrect. 33.5% of other students gave that same incorrect answer.
31. Dr. Furlong testified that the pattern of similar wrong answers for the first 30 questions was concerning. He described the probability of two students generating this number of same wrong answers as very unusual, and the chances of this occurring randomly as "vanishingly small."
32. Dr. Furlong also testified as to his observations about the Student's exam booklet more generally. The students were encouraged to show their work on their exam paper. For the multiple choice portion of the exam, Dr. Furlong could see that some of the Student's diagrams and calculations showed her trying to work the

problems out in a productive and meaningful way. However, for other multiple choice questions, the Student's explanatory diagrams were generic and unhelpful, revealing no real understanding of the question asked or how to solve it.

33. In cross-examination, Dr. Furlong acknowledged that the Student's grade for the multiple choice portion of the exam was higher than M.W.'s grade. For the second portion of the exam, the Student's exam appeared to show more detail than M.W.'s exam did.
34. The Student testified that she performed her own, similar analysis of the two exams. She noted the same pattern identified by Dr. Furlong, and agreed that it was a very strange similarity.

(c) The Aftermath of the Exam

35. The Student testified that she was shocked and saddened by the accusations of academic misconduct. She set about to try and determine how this could have happened. She confided in a friend, who said that they knew of someone else in a similar situation. That "someone else" turned out to be M.W.
36. The Student then met with M.W. to see if there was some explanation for the two of them coming up with such similar answers. There was no overlap in their experience that might explain the exam results. M.W. had taken the course in the summer session, and the Student had taken it in the winter session. The Student had taken a number of preparation sessions through a paid tutoring service, but M.W. had not.
37. The Student suggested that the similar exam results might have been influenced by the fact that the first 30 multiple choice questions were about micro-economics, and the next 20 were about macroeconomics (unfortunately, this suggestion had not been put to Dr. Furlong in cross-examination, so the Tribunal

had little basis for assessing its truth or relevance). The Student also suggested that perhaps M.W. might have copied from the Student, without the Student realizing it. The Student testified that she did not copy from M.W., or anyone else.

Decision and Reasons for Decision of the Tribunal on the Charges

38. 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 had copied M.W.'s answers on the exam. Counsel for the Student submitted that the evidence was simply insufficient to sustain such a serious allegation, particularly given the Student's denial and the inconsistencies in the evidence of the two invigilators.
39. The Tribunal considered two questions: first, was there sufficient evidence of copying between the Student and M.W.; and, if so, was there sufficient evidence that the Student had copied M.W., rather than M.W. copying the Student's exam unbeknownst to the Student.
40. Dr. Furlong's chart showing the similarities and differences between the two examinations was helpful. Dr. Furlong was not tendered as an expert witness, and the Tribunal was not able to simply rely on his opinion that the chance of any two students having the same pattern of answers through coincidence was "vanishingly small". However, there is a striking similarity of not only correct answers (which would be the hoped-for result) but of incorrect answers. This striking similarity seems to have stopped when the Student was moved and separated from M.W. When this evidence is combined with the evidence of the witnesses to the exam, it is as a whole sufficiently compelling to prove the University's case.

41. The evidence of the invigilators was not perfect, and there were some troubling inconsistencies. For example:
- (a) Mr. Gilbert-Gonthier testified that, looking at the two students from the front of the room, the Student was sitting to the left of M.W. This is consistent with the Student's own evidence. However, Mr. Daviet's diagram drawn on the evening of the exam indicates that the Student was sitting to the right of M.W.
 - (b) Mr. Gilbert-Gonthier testified that Mr. Daviet observed the students from behind, while Mr. Daviet testified he observed them from in front.
 - (c) Mr. Daviet was not able to identify the Student at the hearing, which made the inconsistencies with his evidence somewhat more troubling.
42. Despite these inconsistencies, the Tribunal accepts that both invigilators observed the Student looking at the exam of M.W. Mr. Gilbert-Gonthier identified the Student in person at the hearing as the student he saw peeking. His explanation for the discrepancy in his written report – that he made an error – is understandable. Mr. Daviet testified with certainty that the student who was moved during the exam was the student he saw peeking. There is no doubt that the Student was the one who was moved during the exam.
43. Both invigilators recalled the incident with a degree of detail that was persuasive. There was no suggestion that they had colluded, in fact, the discrepancies between their accounts suggests they did not. Considering the evidence in its totality, the Tribunal finds that the differences in their recollections of events are the normal byproduct of memories fading over time, and do not undermine the credibility or reliability of their evidence on the crucial issue of whether they saw the Student look at M.W.'s paper while writing her exam.

44. There was no reason for the invigilators to not be truthful. Mr. Gilbert-Gonthier testified that he was aware that allegations of cheating were serious, with severe implications, and that he would not report suspected cheating unless he was very confident.
45. The Tribunal notes that the burden of proof is on the University, not the Student, and there is no obligation for the Student to prove that she didn't copy from M.W. However, the Student's own evidence discounted the possibility that there were any other rational explanations for the similarities between her exam and M.W.'s exam. In the face of all the evidence against her, the Student's denial lacked plausibility.
46. The Student submits that she couldn't have cheated, because she didn't know who she was going to sit next to at the deferred exam, and in fact she didn't even choose her seat. She sat where the exam invigilator told her to. She claims to have never met M.W. before. On this point, the University submits that the Student's claim that she only met M.W. after the exam is not believable, and that it strains credulity to imagine that the Student just happened to confide in someone who just happened to know M.W. The University suggests that this "coincidence" is as fanciful as the "coincidence" of the exam results.
47. There is not sufficient evidence for the Tribunal to conclude it is more likely than not that the Student had colluded with M.W. in advance of the exam, or that the Student went into the examination with a specific plan to copy M.W.'s exam. It is just as likely that this was a crime of opportunity, and that once the Student realized she could see M.W.'s exam, she decided to copy from it. While this does not affect the Student's liability on the charges, it may be a relevant factor for penalty.

Conclusion

48. The Tribunal finds that, on or about August 11, 2015, the Student knowingly obtained unauthorized assistance to complete the final deferred examination in Introduction to Economics, contrary to section B.I.1(b) of the Code, as alleged in Charge 1. In light of the Tribunal's finding, it is expected that Charge 2 will be withdrawn by the University.
49. The Tribunal will convene as soon as reasonably possible for the penalty hearing.

Dated at Toronto this 19th day of October, 2016



Johanna Braden