

**UNIVERSITY TRIBUNAL  
THE UNIVERSITY OF TORONTO**

**IN THE MATTER OF** charges of academic dishonesty made on August 3, 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

**B E T W E E N:**

**UNIVERSITY OF TORONTO (the "University")**

**- AND -**

**L ■ Y ■ (the "Student")**

**REASONS FOR DECISION**

**Hearing Date:** May 9, 2017

**Panel Members:**

Ms. Roslyn M. Tsao, Chair  
Professor Louis Florence, Faculty Panel Member  
Mr. Chad Jankowski, Student Panel Member

**Appearances:**

Ms. Tina Lie, Assistant Discipline Counsel for University, Paliare Roland Barristers  
Ms. Emily Home, Student-at-law, Paliare Roland Barristers  
Mr. Jonathan G.V. Hendricks, Counsel for the Student

**In Attendance:**

Ms. L ■ Y ■, the Student (by Skype)  
Ms. Kristy Gourlay, Manager, Manager and Academic Integrity Officer, Office of the Student Academic Integrity, Faculty of Arts and Science  
Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Office of Appeals, Discipline and Faculty Grievances  
Mr. Sean Lourim, Technology Assistant, Office of the Governing Council

## **Charges and Appearances**

1. The Trial Division of the Tribunal heard this matter on May 9, 2017. The Student was charged on August 3, 2016 with forgery/falsification on or about March 1, 2016 contrary to section B.I.1(a) of the *Code*, relating to a test booklet for the midterm test in RSM220H1 (the "Course"). The Student was also charged, in the alternative, with engaging in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code*.
2. The May 9, 2017 hearing date was peremptory to the Student following the granting of an adjournment on February 27, 2017, the last scheduled hearing date in this matter.
3. The Student participated in the hearing via Skype connection (from Australia) and her lawyer, Mr. Hendricks was present in person.
4. The Student agreed to the admission of eight (8) Affidavits from Teaching Assistants and two (2) signed statements of two (2) other Teaching Assistants into evidence.

## **SUMMARY OF EVIDENCE AND REASONS FOR DECISION**

5. Witnesses were excluded during the hearing.
6. The University's evidence comprised:
  - (a) testimony by Amy Kwan, one of the Course instructors;
  - (b) testimony of Joanne (Amy) Du, a Teaching Assistant in the Course, who marked the question at issue;
  - (c) Dr. Kristy Gourlay, Manager and Academic Integrity Officer, Office of the Student Academic Integrity, Faculty of Arts and Science
  - (d) eight (8) Affidavits of 8 Teaching Assistants in the Course; and
  - (e) two (2) unsworn Statements of 2 other Teaching Assistants in the Course.
7. The Student testified, via Skype, in her own defence.

### *University's Evidence*

8. The University set out to establish that the Student re-submitted her mid-term answer booklet for grading after altering it, namely, by inserting a loose page into the booklet with an answer to Question 4/Part I, and claiming that such loose page had, in fact, been handed in at the time of the test.
9. The evidence of the University's witnesses, in aggregate, relevant to proving the above offence can be summarized as follows:
  - (a) There were approximately 280 students in the Course, in 6 sections. A mid-term test in the Course was held on February 25, 2016 worth 25% of the final grade.
  - (b) There were 7 invigilators at the mid-term test written by the Student, comprised of 5 Teaching Assistants and 2 instructors. Of the 5 Teaching Assistants, 4 affirm that they do not recall any "student handing in a test paper with a loose page or being advised by a student that their exam booklet contained any loose pages". The 5<sup>th</sup> Teaching Assistant did not recall his invigilating the mid-terms test though he apparently did so. The 2 instructors (males) who invigilated did not give evidence.
  - (c) As outlined by Ms. Amy Kwan, the third instructor, there were standard protocols followed during the set up and sitting of the mid-term test. In particular, at the end of the test, the students would be told to place everything, including the question booklet into their answer booklet for the invigilators to pick up. There was also attendance noted on sign-in sheets.
  - (d) At the end of the test, the invigilators were responsible to collect all booklets, reconcile the number of physical students counted at the test with the sign-in sheets and the number of test booklets handed in. The invigilators then brought the answer booklets directly to the Rotman Centre, Room RT548, for immediate marking.

- (e) At Room RT548, the other 5 Teaching Assistants for the Course and Ms. Kwan joined the seven (7) invigilators at the Student's mid-term test sitting. All 13 of these persons were involved in the marking of the mid-terms.
- (f) In Room RT548, the group of 13 markers ("Markers") sat around one large round boardroom table to mark the tests. Each Teaching Assistant (not instructors) was assigned to mark one question of the mid-term and there could be one or two Teaching Assistants assigned to a question. The answer booklets were divided into "piles" and placed in the middle of the table. A Marker would pick a pile to mark his or her assigned question and, when that pile was completed, it was returned to the middle of the table and another pile was taken, until all booklets had been marked.
- (g) Question 4 was marked by Juan (Amy) Du (a Teaching Assistant who had not invigilated the Student's test) and Alex Zhenqian Guo, another Teaching Assistant.
- (h) Nothing was permitted to be removed from the marking room during the approximately 10 hours of marking from 1 pm to 11 pm.
- (i) If any loose pages were found by any of the Markers, the Marker would have discussed it with Instructor Kwan and/or the loose page would have been stapled into the answer booklet.
- (j) By the time a test was completely marked, anywhere from between 6-8 Markers would have looked at any given answer booklet.
- (k) Ms. Du, one of two Markers assigned to mark Question 4, confirmed that it was not necessary to answer Part I correctly to answer Part II.
- (l) Ms. Du, as did the other 9 Teaching Assistant Markers, confirmed that she never saw a loose page in any of the answer booklets and had she seen a loose page, she would have brought it to the attention of Instructor Kwan and/or stapled it into the answer booklet.

- (m) On February 29, 2016 at 12:23 pm, an email was sent to the students that the graded mid-terms were available for pick up at the Rotman Commerce office starting at 2:30 p.m. The mid-term would be reviewed in tutorials that week. The email also advised that a solution/guideline had been posted to the course site.
- (n) The Student picked up her mid-term from the Commerce office on February 29<sup>th</sup> and attended at the class that day at 4:00 pm and the tutorial later at 6:00 p.m.
- (o) On March 1, 2016, the Student submitted a request for re-marking of her mid-term on the basis that the loose page inside her answer booklet, had been overlooked. On her cover note, the Student stated that she picked up her answer booklet on February 29<sup>th</sup> at approximately 3:00 p.m. and at about 4:00 p.m., she approached Instructor Scott Douglas to advise that there was a loose page with the answer to Question 4/Part I which had not been marked. At the tutorial at 6:00 p.m., the Student showed the page to the Teaching Assistant, Mr. Y■■■■, who took a picture of the page to capture its form at that time.
- (p) Ms. Du was responsible for re-grading all tests which were re-submitted for marking.
- (q) Ms. Du graded the Student's loose page which had the answer to Question 4/Part I. The Student would have obtained an additional 19 marks for that answer.
- (r) There was well-founded skepticism by the Instructors that all Markers had missed seeing the Student's loose page in her booklet. Further investigation about whether the Student had engaged in some form of academic misconduct was, therefore, undertaken.
- (s) Instructor Kwan firstly emailed each of the Teaching Assistant Markers to ask whether he or she had noticed any "ripped out pages" during the marking process and if so, whether he or she had marked such a page or stapled it into the answer booklet. Each Teaching Assistant responded that he or she had not seen any ripped out pages.

- (t) Furthermore, Ms. Du was able to confirm that she marked the Student's Part II of Question 4 and that she did not see any loose or ripped out pages in the course of marking all the tests.
- (u) When the Student did not receive any response to her re-marking request, she emailed her academic advisor, Robert Michaud. In this email dated April 6, 2016, she advised:
- During the exam, she wrote a question wrong (presumably Part I/Question 4), crossed that page off and tore it off from the exam booklet.
  - She then wrote the answer for that same question on the next page.
  - That when the Teaching Assistant in the exam centre came and collected her paper at the end of the mid-term, the Student informed her of the torn out page with the answer to be marked. The Student emailed that this Teaching Assistant "saw that page and **fold (sic) it** and put it into the exam booklet" (emphasis added). The Student implies that she kept the other page (from the folio).
  - The Student stated that she picked up her test paper from the Commerce Office at about 3:30 pm, then went to class at 4:00 pm and told Instructor Douglas about the issue of the unmarked loose page. Instructor Douglas told her to speak to the Teaching Assistant later.
  - At the 6:00 pm tutorial later that same day, the Student brought the matter up to the Teaching Assistant, Mr. Keith Yuen, who took a picture of the page and suggested she hand it in to the Rotman office.
  - The Student complained that the results of the re-marking had not been provided by March 17<sup>th</sup>, the deadline for response, and that she had wanted to know the results in advance of the deadline to drop the course.
10. It is noted, and, in fact, critical, that the loose sheet, when examined by the panel, had clearly never been folded.

11. Furthermore, none of female invigilators (nor any of them) recalls a discussion at the test centre with a Student about handing in a loose page with her booklet.
12. There were three (3) Dean's Designate meetings with the Student (the Student's lawyer attended with the Student at the latter two meetings). The Student denied guilt to any offence.

### ***Student's Evidence***

13. The Student testified in chief and re-affirmed her version of events as set out in her email of April 6, 2016 (described above) including that the loose page was folded by the invigilator and put inside her answer booklet.
14. The Student did not, however, confirm when she picked up her test booklet from the Commerce Office. The test booklets were available from 2:30 pm for pick up.

### **DECISION OF THE TRIBUNAL**

15. The University bears the onus of proving the elements of the offence based on clear and convincing evidence" (Code: s. C.II.(a) 9.). In this particular matter, the University must prove that the Student altered her answer booklet (by inserting a page with additional answer material) after it had been graded and before she re-submitted it to be re-marked.
16. The evidence of the numerous witnesses tendered by the University (both in person and by Affidavit) relating to the procedure and methodology surrounding the chain of custody of the examination booklets from the sitting of the mid-term test, through to marking and return of the booklets to the student was consistent, compelling and not shaken by the Student's version of events.
17. The Student's version of events cannot be reconciled with the other evidence. The loose page that was to be re-marked was not folded despite the Student stating that the female invigilator had seen the page at the test centre, folded it and inserted it into her answer booklet.
18. It is also wholly untenable that the loose page, had it been inserted in the Student's original answer booklet, made its way to the marking centre and through the hands of 6-8

Markers who would have been flipping through the whole booklet to find their particular assigned questions with no one seeing such loose page over the course of the 10 hours of marking. It is even more untenable that the loose page somehow remained intact in the Student's answer booklet, after being unseen by anyone in the foregoing process, at the time of return to the Student.

19. The more clear and compelling explanation is that the loose page was never in the Student's original answer booklet and was inserted after the return of the test to the Student and before the Student re-submitted it for marking. It does not matter when the answer on the loose page was actually written, be it during the test but perhaps it was not handed in or whether it was subsequent and based on the solutions/guidelines<sup>1</sup>. The act of misconduct is the submitting of the page for re-marking in the guise that it was part of the original answer booklet.
20. The Panel, therefore, finds that the elements of the offence have been established and that the Student is guilty of the forgery/falsification charge.
21. The alternative charge, if it was not formally withdrawn by the University at the hearing, is dismissed.

### **Penalty**

22. The University requested the following penalty:
  - (a) a final grade of zero in the course RSM220H1;
  - (b) a suspension for two-and-a-half years; and
  - (c) a notation of the sanction on the Student's academic record and transcript from the date of this order for a period of three-and-a-half years.

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<sup>1</sup> The University submitted that the Student's purported score on the impugned question, at 88%, was evidence of misconduct given the Student's poor responses on the other parts of the test. The Panel does not consider this argument to be compelling as poor performance by a Student on other parts of the test (or even during the Course) cannot be used to bootstrap an allegation of misconduct. There is a danger of presuming that a poorly-performing student who improves his/her performance is more likely to have committed academic misconduct and the Tribunal does not accept that premise or its corollary.



23. The University submitted and the Panel agrees that the Student has displayed limited remorse and caused a significant level of resources to be expended by the University at this hearing.
24. The University also submitted that there is an obvious level of conscious thought which went into this offence and there were a number of occasions when the Student could have chosen to take a different course in disputing the evidence.
25. Mr. Hendricks advised that the Student's parents abruptly booked a plane ticket for the Student to return home the same day that she finally told them about the charges shortly before the last hearing date in February, 2017. It is presumed and hoped that her parents were appropriately alarmed at the allegations and the jeopardy to the Student's education at the University given the significant financial cost.
26. The Student has no previous history of academic misconduct and appears, from her transcript, to have performed reasonably well at university.
27. The Panel also reviewed a summary of similarly-situated cases provided by the University.
28. Accordingly, the Panel finds that the appropriate penalty in this case is:
  - (a) a final grade of zero in the course RSM220H1;
  - (b) a suspension from the University of Toronto from the date of this order for a period of two years, ending May 8, 2019; and
  - (c) a notation of the sanction on the Student's academic record and transcript from the date of this order for a period of three years, ending on May 8, 2020; and
29. An Order was signed at the hearing by the Panel. The Tribunal is to report this decision to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed in the University's newspapers, with the name of the Student withheld.

Dated at Toronto, this 11<sup>th</sup> day of July, 2017

A handwritten signature in black ink, appearing to be 'Roslyn Tsao', written over a horizontal line.

Roslyn Tsao, Co-Chair