

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on October 11, 2011;

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:

THE UNIVERSITY OF TORONTO

- and -

Y [REDACTED] T [REDACTED]

Date of Hearing: June 19, 2012

Members of the Panel:

Ms Lisa Brownstone, Barrister and Solicitor, Chair
Professor Markus Bussmann, Faculty Panel Member
Ms Alice Kim, Student Panel Member

Appearances:

Ms Lily Harmer, Assistant Discipline Counsel, Paliare Roland Barristers
Ms Mary Phan, Law Student, Downtown Legal Services
Dr. Jingsong Ma, Instructor, GASB11H3S: Introduction to Chinese Literature
Ms. Trelani (Milburn) Chapman, Invigilator for GASB11H3S: Introduction to Chinese Literature Examination

In Attendance:

Mr. Y [REDACTED] T [REDACTED] the Student
Professor Eleanor Irwin, Department of Electrical and Computer Engineering
Mr. Christopher Lang, Director, Appeals, Discipline and Facility Grievances

Preliminary

- [1] The Trial Division of the University Tribunal was convened on June 19, 2012 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 11, 2011 from Professor Edith Hillan, Vice-Provost, Faculty & Academic Life.

Hearing on the Facts

- [2] The charges facing the student were the following:
- (1) On April 30, 2011, you knowingly used or possessed an unauthorized aid in the final exam (“Exam”) in GASB11H3 (“Course”), contrary to section B.I.1(b) of the *Code*.
 - (2) In the alternative, on April 30, 2011, you knowingly engaged in a form of cheating, academic dishonesty or misconduct not otherwise described in the *Code* in order to obtain an academic advantage in the Exam, contrary to section B.I.3(b) of the *Code*.
- [3] Particulars of the charges were as follows:
- (1) At all material times, you were a registered student at the University of Toronto at Scarborough. In Winter 2011, you enrolled in the Course.
 - (2) On April 30, 2011, you wrote the Exam, which was worth 45% of the final grade in the Course. No aids were allowed in the Exam.
 - (3) During the Exam, you were found in possession of a piece of paper containing notes relevant to the subject matter of the Course. You knew, or ought to have known, that you were not permitted to have such an aid in your possession during the Exam.
 - (4) You knowingly possessed an unauthorized aid during the Exam.
 - (5) You knowingly engaged in a form of cheating, academic dishonesty, or misconduct in order to obtain an academic advantage during the Exam.
- [4] The Panel was provided with a Book of Documents containing nine tabs, which was marked on consent as Exhibit 1. Both the University and the student provided opening statements, through which it became clear that the sole issue in this case was whether the

University could prove on a balance of probabilities that the student in question was the student who possessed the unauthorized aid during the examination.

- [5] The student pleaded not guilty to Charge #1. The University advised that the charges were in the alternative, so that the University would withdraw Charge #2 if there was a finding made on Charge #1. The student pleaded not guilty.

The Evidence

- [6] The University's first witness was Dr. Jingsong Ma. Dr. Ma testified that she has been a sessional lecturer at the University of Toronto since 2004 and has taught the Introduction to Chinese Literature course many times since the summer of 2004. She identified (at Tab 4 of the Book of Documents) the course outline, and after several minutes agreed that it must have been for the year 2011. On that course outline, there was an indication that the final examination in the course for the winter 2011 term would be worth 45%. Dr. Ma also identified Mr. T [REDACTED] examination paper (at Tab 5 of the Book of Documents).
- [7] Dr. Ma testified that she was present at the final examination along with two invigilators whose names she did not know. She has since become aware that one of the invigilators' names was Ms Chapman; the other was a male but she does not remember his name.
- [8] Dr. Ma's evidence was that there were about 70 students writing the examination that day and that there were no other exams taking place in the room. The exam took place on the Scarborough Campus in Room SW 319. She testified that it was a fairly big lecture hall that could easily sit 70 students with space in between them.
- [9] Dr. Ma described the room as having two or three big rows with a passage way in the middle and steps going up from the podium; that is, that the room was theatre style. When shown a diagram (Tab 7 of Exhibit 1) she stated that she did not draw the diagram and indeed could not remember if she had seen it before, but she agreed that the diagram was similar to the examination room. She indicated that during the course of the examination she was walking up and down answering questions and checking out what the students were doing.
- [10] Ultimately the Panel asked, and, with the parties' consent, was shown a photograph of the lecture hall, which gave a sense of the size of the room, and indicated that the capacity of the room was 175 students.
- [11] At the beginning of the examination, there was an announcement made by the male invigilator. The students were told that no aids were permitted; just a pen and student card should be on the desk in front of them.

- [12] The invigilators checked to ensure that the name on each examination matched the name on the student card, and that the photograph on the student card matched the student who was there writing the examination. Dr. Ma testified that she did not check any of the names and photographs; this was the invigilators' job. The examination lasted two hours. She also confirmed that the examination itself said that no aids were allowed on the front of the examination.
- [13] When asked whether she knows the student in question, Dr. Ma stated that she could not match the name and the face of the student, that she does not know the student personally, but she knows that he was a student in her class. She believes that he attended all of the classes, according to attendance sheets and her memory. She testified that she does not believe she spoke with Mr. T [REDACTED] during the examination, and that she only observed him when Ms Chapman gave her the note in question. She did testify that the note, a copy of which is found at Tab 6 of Exhibit 1, is about the course material, but stated that it would not directly help answer the questions on the examination. She does not remember when Ms Chapman came to her during the course of the examination, but thought it was likely in the first hour.
- [14] Dr. Ma testified that Ms Chapman told her that she said she found the note in the examination of the student and pointed to Mr. T [REDACTED]. When asked by University counsel whether she could identify this student as the student in question, she said "Yes, I think so."
- [15] Dr. Ma testified that she was at the front of the examination room, at the very bottom of the diagram, on the left hand side of the room. The invigilator came down from the left hand side, on the very left hand set of stairs. Dr. Ma looked at the note, after which the invigilator went back to the student and was taking down his name. Because the contents of the note would not help the student directly answer the examination, Dr. Ma told the invigilator that they should let him continue to write the examination. The invigilator suggested that she write down the student name, after which the invigilator went back to the student. The student was on the left hand side of the room when facing the students, at the very end, like it is marked on the diagram (at Tab 7 of Exhibit 1). Dr. Ma is not sure that he was exactly in that row, but the X on the diagram shows approximately where the student was seated.
- [16] Dr. Ma testified that she saw the student, who looked familiar as a student who had always been in class, and she saw his face turning red. She thought that he must have thought he should not have brought in the note. She told Ms Chapman to let him write the examination and said she was very close to the very first row, not too far from the student. The student continued to write the examination and work on the examination paper and Dr. Ma put the note in a folder.

- [17] When Ms Chapman first brought her the note, it did not have the student's name on it. Ms Chapman took it back, took the name and student number and gave it to Dr. Ma who put it away.
- [18] In her testimony, Dr. Ma went through some of the content of the note and indicated that the note contained information about various authors and their work, but said that the examination asks for an analysis as opposed to simply facts about who each author was and what their writing said. The examination consisted of eight short answer questions and an essay. There was one author on the examination who did appear in the note (question 7, p. 4 of the examination). She did not see anything in Mr. T [REDACTED] examination answers that appear to have come from the aid and told the Chair, when later asked, that she graded the examination normally and did not deduct anything. She forwarded the examination and the note to the Chair. She testified that the examination questions were not told to the students in advance; the students were told how to do readings and analyses but were not provided the questions.
- [19] With respect to the letter at Tab 9 of Exhibit 1, which was a letter from Professor Irwin to the student, Dr. Ma testified that although the letter shows that she was copied on it, she does not remember if she ever received it. She did meet with Professor Irwin and the student, but does not remember receiving a letter summarizing the meeting afterwards. She said that she did not pay too much attention to the situation. She was not asked about and did not testify about the contents of the meeting between Professor Irwin and the student, although Tab 9 indicates that the student said at both meetings with Dr. Irwin that he was not the one who had the unauthorized aid.
- [20] In cross-examination Dr. Ma stated that she only met the student in class; that the class met for 2 hours a week, had 70 students in it and no tutorials. He never came to her outside of class. She also testified that there were a lot of Chinese students in the class and very few students who were Caucasian or of other minorities.
- [21] When Ms Chapman brought her the note, Ms Chapman pointed to the student and said it was the student over there. It was only when Ms Chapman went back to the student that Dr. Ma saw that she was talking to Mr. T [REDACTED] When Ms Chapman first told Dr. Ma that she found the note, she did not identify the student or tell Dr. Ma the student's name.
- [22] Dr. Ma acknowledged that while reading the note, she did not look at the student. She testified that the answers in the booklet did not really come from the note. She stated that the conversation with Ms Chapman lasted a couple of minutes or less, and that she was not monitoring the students while talking to Ms Chapman. The first time she identified the student was when Ms Chapman went back to him.
- [23] The University's second witness was Ms Trelani Chapman, a PhD student at the University of Toronto. Ms Chapman testified that she has been an invigilator in various courses at the University; she invigilated the courses in which she was a teaching

assistant for eleven terms, and also invigilated when needed in other courses at least twelve times. She confirmed that she invigilated at the final examination in question in April 2011.

- [24] She testified that there was a male invigilating with her at the examination whom she has invigilated with in other courses, and Dr. Ma was also present. She does not recall anyone else being present in the room. She estimated that there were about 75 students writing the examination and advised that her job was set out in instructions from the University. Invigilators are not allowed to answer content questions but can assist with washroom breaks, attendance, and are also expected to monitor for assistance and misconduct. The invigilators help get the students settled, remind them to put their University of Toronto Student Card ("T-Card") which has the student's picture, name, signature and student number, on their desks. During the examination, they walk around and are required to be attentive to the students. They survey the room to ensure that nothing untoward is happening. Usually, the invigilators agree among themselves to divide the room into sections that each invigilator will focus on.
- [25] Ms Chapman testified that she created the diagram of the examination room at Tab 7 of Exhibit 1 at the request of Professor Irwin. Professor Irwin sent her an email in November, 2011 requesting that she draw the room as she recalled it. Ms Chapman drew the diagram herself from memory in about November 2011; she did not travel to the Scarborough Campus to view the room to draw it. There are aspects of it that she could not guarantee were accurate such as the number of rows and chairs.
- [26] Ms Chapman testified that during the examination she was walking up the stairs, on the left hand side of the room between four and six rows back when, at eye level, she saw a piece of paper in between the pages of an examination, which were folded over. She noticed that there was a difference in font size as she came up the stairs; she testified that the examination was in 12 point font and she saw a different font underneath some pages as she passed the examination. On the diagram she identified the seat in question as the fifth row back but she could not be 100% sure that that was exactly right. She identified the small document (Tab 6, Exhibit 1) as the piece of paper removed from the student that day and identified her handwriting on the document where the name and student number were written.
- [27] Ms Chapman demonstrated for the Committee how the examination was folded and how she saw the piece of paper that had been tucked in between the pages. She stated that her eyes were on the table, that she was looking for words written on erasers or other tools, which is common to find. She testified that in other cases, she has seen words written on pencils, or on hands, and that the invigilators are looking carefully for such things. When she saw the very small font size with the line spacing very close together, it stood out to her.

- [28] Ms Chapman testified that she placed her index finger on the examination to hold the pages together and identified that she needed to see the document. She did not think that the student recognized that she was there; as she saw the note and moved towards the examination paper, the student gave her a blank look. The student took hold of the examination with both hands and tried to pull it away. She held it together with her finger where she knew the paper was. She instructed the student that she needed to see it and that he needed to let go, and he continued to try to pull it away. She knew that it was a male student. Up to that point, she was focused on seeing the aid, and not on the student's face to a great extent. She testified that she needed to fulfill her obligation to confiscate the aid. She did notice a blank stare as she began to move her hand toward the examination and the student ultimately did let go of the paper. Ms Chapman left the examination on the table and opened it so that it was flat in front of him and picked up the aid (a copy of which was at Tab 6, Exhibit 1). The original aid was later filed as Exhibit 2. Ms Chapman testified that she recognized the document as an unauthorized aid and looked towards Dr. Ma at the front of the room. Ms Chapman testified that Dr. Ma was busy talking to the other invigilator, and that she could not get her attention which she had hoped to do so that Dr. Ma could come to her.
- [29] Ms Chapman testified that she wanted to move things along so she decided to go to Dr. Ma. She had the aid in her hand and as she was walking down, Dr. Ma recognized that something was going on.
- [30] According to Ms Chapman, Dr. Ma started walking toward her to the bottom left of the stairs from the podium. Ms Chapman identified to Dr. Ma that she had retrieved an unauthorized aid from the student. She gave the aid to Dr. Ma. When she gave the paper to Dr. Ma, Dr. Ma read the content and said the content would not help with questions on the examination. Ms Chapman said that still, it was an academic offence and it needed to be pursued. Since it was a Saturday and there would not be many people around, Ms Chapman came up with the suggestion that they write the student's name and student number on the aid, that they make a note of it, and that they allow him to finish the examination. Dr. Ma could then make inquiries with the department. Ms Chapman testified that usually she would defer to the Professor, but in this case Dr. Ma seemed unclear so she made this suggestion.
- [31] Like Dr. Ma, Ms Chapman testified that this conversation lasted about two minutes. According to Ms Chapman, Dr. Ma thought that Ms Chapman's plan was a good one and agreed with it. Ms Chapman then testified that Dr. Ma then started going up the stairs on the left to go toward the student. According to Ms Chapman, Dr. Ma at this point had the aid in her hand and Ms Chapman stayed at the bottom of the stairs. Dr. Ma then motioned to Ms Chapman to come with her.
- [32] Ms Chapman testified that Dr. Ma said something to the student but that she was not close enough to hear what was said, and that Dr. Ma told Ms Chapman to go ahead with the identification process. She got the student card from the desk, Dr. Ma gave Ms

Chapman the aid, Ms Chapman looked at the picture on the card and the face and wrote the student number down and double-checked as she wrote the student number and the name on the unauthorized aid. When asked whether she could identify Mr. T [REDACTED] at the hearing, she said she could not say with 100% confidence that she recognized him, but that he looks similar.

- [33] At the time, she indicated that she felt confident that it was the same person as shown on the picture on the student card. She was reasonably confident that what she wrote on the paper was what was on the card and she was very confident that she then double-checked it to make sure that it was correct.
- [34] She repeated that Dr. Ma had gone ahead of her and led the way. She did not think she had an extensive conversation with the student and could not recall with certainty, but she believes she told him that he would be allowed to continue writing the examination and that someone would be contacting him later. It was more her informing him about this as opposed to a discussion between her and the student. Ms Chapman then stated that she had gone three times to the student, the third time being to tell him that he could write the examination but that he might be contacted. She stated that at the time she found the aid, his eyes were downcast, his head was low; in fact, she demonstrated for the Panel how his head was looking down at the time. She said that he was not engaged in dialogue with her. She thought about 40 seconds passed between the time she came up to him initially and the time he let go of the examination. Her first interaction with him was about 3 minutes, the second was 3 to 4 minutes (in that case Dr. Ma was apparently interacting more) and the third time there was no dialogue and therefore it probably lasted less than a minute.
- [35] Because of the way she initially saw the note, she initially stated that she felt quite confident that he was sitting on the end of an aisle. She then said she had no question he was on the end of an aisle or she might not have seen the note in the same way, given the way the paper was folded over. She did not write down his seat number and the rows are not numbered. Ms Chapman estimated how many stairs she had gone down to the bottom and how many back up, to estimate how far away she had been from the student when she went down to Dr. Ma.
- [36] Ms Chapman's testimony was that she knew which student it was because he was looking at her all the way with a concerned look on his face. He was engaged in nothing except what would happen next. She said she was not at all concerned about not being at the right student's spot. Ms Chapman did acknowledge that she had her back to him while she was walking down the stairs. She said when she talked to Professor Ma and pointed to him, "he was looking at us". Other students were not looking at them "with the same focus." Ms Chapman testified that she had just left there, she knew where she had been, and she had no question that she was returning to the same place. She explained that she had a pretty good notion of the student's features, and that he was looking at them with a very concerned look on his face. She testified that both Professor Ma and Ms Chapman

knew where they were going. She repeated again that Professor Ma was ahead of her and that Professor Ma knew where she was going because of the look on the student's face.

- [37] Ms Chapman testified that she found the situation unusual because often, when situations like this arise, the student becomes engaged if there is questionable behavior. There is often pleading or insistence that the aid was not theirs. None of that happened here and there was nothing volatile. There was obvious concern and inquiry but the student had his head down and appeared disengaged from the process. It stood out for her as different from other situations.
- [38] She indicated again that she could not say, looking at the student right now, that he was the student with the aid with absolute confidence, but she had reasonable confidence that this was so.
- [39] In cross-examination, Ms Chapman agreed that she had no contact with the students in this course prior to the examination unless they also happened to be taking linguistic courses. She indicated that she had no prior interactions with Mr. T [REDACTED] that she knew of. She agreed that of the students taking the examination, the majority were of Asian descent. She did not remember if she was in and out of the room often on washroom breaks, but indicated that in a two hour examination, this tended not to happen very often. She recalled the night as being unremarkable in terms of how busy her role was.
- [40] Ms Chapman indicated that she did look at the student as he was trying to pull the examination away, as she told him not to pull it away. She did not look at his student card at that time, and when she went to talk to Dr. Ma, thought she was 15 or 20 feet away from the student. Once she delivered the note to Dr. Ma, Dr. Ma was in charge. Ms Chapman agreed that she was not paying attention to the cheating student during her discussion with Dr. Ma. When Dr. Ma asked who the student was, she and Dr. Ma looked up together. Dr. Ma read the aid and they had a discussion, during which Ms Chapman was not watching the student. The students in the area appeared to be minimally distracted by what was going on, although there was some curiosity. There were some students looking around, but not in a sustained way. She described the student from whom she took the note as having "no affect." Ms Chapman repeated that the second time she went to the student, what was notable about the situation was that there was no pleading or no defence. She indicated that he was engaged and concerned but not like other cases, and that based on her past experience, she would have expected more either way. She found it unusual as she would usually see a reaction as opposed to a withdrawal. She indicated that she did believe that the student was panicked but that in her experience, there was usually more engagement.
- [41] When she did the attendance, at the beginning of the examination, her best guess was that she probably did the other, larger half of the room, and not the half of the room where Mr. T [REDACTED] was sitting.

- [42] When it was suggested to her that she went to the wrong student the second time, she indicated that she was not saying that it is impossible, but that it was ever so remotely possible.
- [43] In response to a question from the Panel, Ms Chapman indicated that she was reasonably confident that there were people at the end of every row, that is, that the students were not staggered because that would have made it easier for students to cheat. When asked whether anything distinguished the student from others and how she identified him, she indicated that some of the students were females, that she does not have a lot of hesitation in saying who the student was, and that the student seemed quite engaged in what happened next. She indicated that since she had just left the student, she felt that she went back to the same student, that he was watching the process and that the student did not disagree with what they had returned to address. She had no concern that they had the wrong person.
- [44] That was the totality of the evidence for the University.
- [45] The defence called Mr. T■■■■ as a witness. The Panel noted that during the process in which he was affirmed to tell the truth, several attempts were made to explain what was being asked of him until he appeared to understand the words used in the affirmation process. He indicated that he would be starting his fourth year at the University this fall. The Introduction to Chinese Literature course was a required course in his program. He outlined some of what was involved in the course, testified that he had never been accused of an academic offence before and that he is an international student, largely paid for by his parents. He testified about his hope to remain in Canada after his studies.
- [46] Mr. T■■■■ testified that the examination in question on April 30, 2011 was an evening examination. When shown the diagram at Tab 7 and asked where he was sitting, he testified that he cannot clearly know where he was sitting. He said that maybe there were people around him during the examination.
- [47] He testified that the invigilator came to him two times, the first was the usual student identity checking and the second was when the invigilator wrote his student name and number on a piece of paper. He said that the invigilator never came to take anything away from him, that he was focused on the examination, and that he doesn't remember her saying anything to him. He did say that at some point in the examination he asked a question of the Professor and that is the only time he talked to the Professor.
- [48] When shown a copy of the aid at Tab 6, he indicated that he recognized this as it was shown to him in his first meeting at the Dean's Office with Professor Irwin. He testified that that was the first time he saw the note.
- [49] He identified his examination paper at Tab 5. He testified that in his view, the handwriting on the aid and the handwriting on the examination were obviously different.

He then wrote some characters, both English and Chinese, on a piece of paper which was marked as Exhibit 5, in an effort to show the differences in handwriting.

- [50] Mr. T ■ testified that there were 60 to 70 people in the class and about the same in the examination room. A lot of the class was Chinese or East Asian; in his estimation almost 80%. He did not speak a lot in class or to the Professor and may have only asked questions during assignments.
- [51] He testified that he did not bring a note to the examination with him.
- [52] In cross-examination, Mr. T ■ testified that he did not remember if it was a male or female invigilator who first came to him when he signed into the examination. He knew that no aids were allowed in the examination. He did not remember where he was sitting, but said there were people all around him at the examination. He first indicated that he would only remember where he was sitting if he had been sitting in a very unusual spot, such as at the very front or the very back. After stating that there were people sitting all around him, he agreed with the suggestion that he was not sitting at the end of the row. He said that the invigilator never came to him a third time and acknowledged that if he was not sitting on the edge, she would have had to move across students. He said that he was in the middle of the row.
- [53] He also said that there were two meetings with Professor Irwin and agreed that he received the letter at Tab 9 after his two meetings with Professor Irwin.

Submissions

- [54] The University submitted that the Panel ought to accept Ms Chapman's evidence that she had no concerns that she had identified the wrong student as the one who had the aid. The University's view was that that this was a pure question of credibility; the Panel cannot believe both Mr. T ■ and Ms Chapman.
- [55] University counsel pointed out that Ms Chapman was prepared to acknowledge when her memory was unclear, such as with respect to the exact number of rows in the room, but was clear that she had not made a mistake with respect to the student's identity.
- [56] Further, in the University's submission, it would be very unusual for two different students to give the same unusual response to Ms Chapman. In counsel's submissions, if it was two different students, one would expect there to be different responses when the students were approached by the invigilator.
- [57] The content of the note was relevant to the course; whether the student used it was immaterial. The University submitted that the Panel should disregard the handwriting demonstration and place no weight on the handwriting created during the hearing.

- [58] University counsel also pointed out that the aid contained very small printing and could be expected to differ from the writing on the examination which would be done in a hurried fashion.
- [59] The University submitted that it had met its burden of proving on a balance of probabilities that this was the student who had carried the unauthorized aid into the examination, and that Mr. T ■■■ was therefore guilty of Charge #1.
- [60] The student's submissions re-advanced his defence that this was a case of mistaken identity and pointed out that for at least two minutes, the invigilator and Professor were not watching the student. Ms Phan submitted that the Panel should expect that the answer on the examination would be similar to the information on the aid if he had used it. She pointed out that the invigilator did not check the student's identification the first time when the aid was found, did not clearly remember where he was sitting, and Dr. Ma did not identify the student.
- [61] Ms Phan suggested that the student may have been looking blankly at the invigilator because he did not know what was going on. In her submission, the University had not satisfied its burden. She agreed that the standard of proof was that the University needed to show that it was more likely than not that this was the student who had been in possession of the unauthorized aid, and submitted that the University had not done so.
- [62] In reply, the University indicated that the examination answer need not necessarily have reflected the contents of the aid; she pointed out that the note was confiscated, and this confiscation could have occurred before that answer was written.

Decision of the Tribunal

- [63] The University and the student agreed that the only issue in the case was identity; both parties agreed that the aid was unauthorized, and that if the University established that Mr. T ■■■ was the student who had the aid during the examination, the offence as alleged would be proven.
- [64] The Panel was disturbed by material discrepancies between the evidence of Dr. Ma and that of Ms Chapman. Unfortunately, Ms Chapman did not check the student identification at the time that she took the aid. Therefore, she had to be certain that she was going back to the same student after she walked away from him, conferred with Professor Ma, and went back up the stairs.
- [65] Ms Chapman's testimony was clear and she stated more than once that Dr. Ma was the one who went up to the student after Ms Chapman had given the aid to Dr. Ma; Ms Chapman said she simply followed. According to Ms Chapman, Dr. Ma knew which

student she was going to because the student was looking at them. Ms Chapman's evidence was that Dr. Ma spoke with the student at that time; Ms Chapman could not hear what was said. However, Dr. Ma testified that she did not speak to the student during the examination, that it was Ms Chapman who went up to speak to the student. Dr. Ma testified that she only knew who the student was when she saw Ms Chapman speaking to the student. These discrepant versions of what happened go to the very heart of the issue of identification.

- [66] Dr. Ma was not able to identify the student with any degree of certainty. Her description of seeing the student's face turning red during a discussion with Ms Chapman was completely at odds with Ms Chapman's testimony. According to Ms Chapman, the student had no affect, and it was Dr. Ma, not Ms Chapman, who confronted him about having the unauthorized aid.
- [67] In considering the student's evidence, the Panel had some concerns about whether the student understood everything that was put to him in his examination and cross-examination, starting with the process of being affirmed. To the extent that the student was able to understand and answer questions, he did so in a forthright manner. He had, according to Tab 9 of Exhibit 1, maintained throughout his meetings with Professor Irwin that he had not taken the aid into the examination.
- [68] Ms Chapman also testified in a forthright and clear manner; however, the inconsistencies between her and Dr. Ma on the central issues could not, in the Panel's view, be overcome by the rest of her evidence. Ms Chapman was inconsistent in her evidence on the level of engagement that the student had in the process, at times referring to him as disengaged and at other times very engaged. Further, after Ms Chapman's demonstration to the Panel of how the student was physically sitting, with eyes downcast and head down, the Panel cannot conclude that it is more likely than not that Mr. T ■■■ is the correct student.
- [69] The Panel understands that more than a year has passed since the events, and memories fade. However, the University has the burden of proving that it was more likely than not that this is the correct student. Given the frailties of the evidence and the material discrepancies between the two witnesses about the student's identification, set out above, the Panel finds that the University has not discharged its burden.
- [70] Accordingly, the Panel finds the student not guilty of the charges before it.

Dated this 11th day of July, 2012



Lisa Brownstone, Co-Chair