

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on July 19, 2012;

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 -

C [REDACTED] A [REDACTED] M [REDACTED]

Date of Hearing: February 20, 2013

Members of the Panel:

Ms Lisa Brownstone, Barrister and Solicitor, Chair

Professor Pascal van Lieshout, Department of Speech-Language Pathology, Faculty Panel Member

Mr. Yingxiang Li, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Barristers

Ms. Tina Lie, Lawyer, Paliare Roland Barristers

Mr. C [REDACTED] A [REDACTED] M [REDACTED], the Student

Professor Stewart Aitchison, ECE318: Fundamentals of Optics, Course Instructor and Vice-Dean Research, Faculty of Applied Science and Engineering

Mr. Nick Carriere, ECE318: Fundamentals of Optics, Teaching Assistant

Mr. Alex Wong, ECE318: Fundamentals of Optics, Teaching Assistant

Professor John Carter, Dean's Designate, Department of Electrical and Computer Engineering

Mr. Diane Kruger, Forensic Document Examiner, Forensic Examiners

In Attendance:

Mr. Adam Goodman, to advise student, not on the record

Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

Preliminary

- [1] The Trial Division of the University Tribunal was convened on February 20, 2013 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "*Code*") laid against the student by letter dated July 19, 2012 from Cheryl Misak, Vice-President and Provost, Faculty & Academic Life.
- [2] Although Mr. Goodman was in attendance, it was clear that he was not acting for the student and was not appearing on the record. Rather, he was there at the student's request to provide advice to the student should he request it as the hearing proceeded. The University did not object to this procedure, as long as it would not interfere with the hearing process.

Hearing on the Facts

- [3] The charges facing the student were the following:
 - (1) On or about April 3, 2012, you knowingly forged or in any other way altered or falsified a document that you claimed was your examination for Class Test 1 in ECE 318 – Fundamentals of Optics ("Course"), which was a document or evidence required by the University, or you knowingly uttered, circulated or made use of that forged, altered or falsified document, contrary to section 8.1.1(a) of the Code.
 - (2) In the alternative, on or about April 3, 2012, you knowingly forged or in any other way altered or falsified an academic record, which was the document that you claimed was your examination for Class Test 1 in the Course, or you uttered, circulated or made use of that forged, altered or falsified academic record contrary to section B.1.3(a) of the Code.
 - (3) In the further alternative, on or about April 3, 2012, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind, by altering and submitting a document that you claimed was your examination for Class Test 1 in the Course, contrary to section B.1.3(b) of the Code.
- [4] Particulars of the charges were as follows:
 - (1) At all material times you were a student at the University of Toronto and were registered in the Course, which was taught by Professor Stewart Aitchison in the Winter term of 2012.

- (2) On or about February 6, 2012, Professor Aitchison administered Class Test #1, which was worth 4% of the final mark in the Course. You did not attend or write Class Test #1.
 - (3) In late March or early April, you advised Professor Aitchison that you had received a mark of 20 out of 20 on Class Test #1 and that your grade had been recorded incorrectly as a zero. You gave Professor Aitchison a document that you claimed was the examination that you had written in Class Test #1. The answers contained in the examination that you submitted had received a grade of 20 out of 20.
 - (4) The examination that you gave to Professor Aitchison was not your own. You altered another student's examination in various ways so that it appeared to be yours. You then submitted the altered examination to Professor Aitchison and claimed that it was yours.
 - (5) You circulated and made use of the altered examination knowing that it had been altered.
 - (6) You circulated and made use of the altered examination intending that the University would rely on it and for the purpose of obtaining academic credit, or academic advantage, or higher marks.
- [5] The Student pleaded not guilty to all charges.

The Evidence

- [6] The University called several witnesses: Professor Aitchison, Nick Carriere, a Teaching Assistant ("TA") in ECE 318, Alex Wong, the second TA in the course, Professor John Carter, and Dianne Kruger, a forensic document examiner.
- [7] Professor Aitchison testified that he was teaching ECE 318, the Fundamentals of Optics, beginning in January, 2012. Both the course outline and the slide deck from the first lecture were introduced as exhibits.
- [8] That slide deck indicated that there would be two class tests worth a total of 10% of the final mark in the course, as well as a mid-term examination worth 20%. The remainder of the marks were made up of labs and a final examination. Professor Aitchison's contact information (email and telephone number) was also provided in the slide deck.
- [9] Professor Aitchison testified that the course covered basic topics in optics and was an undergraduate course. The first class test took place on February 6, 2012 in a different

room than that where the lectures took place. Professor Aitchison and the two TAs distributed the booklets to the students in the class and the booklets were placed face down on the desks until it was time for the test to start. Since it was a half hour test, it began 15 minutes after the hour and ended at 15 minutes before the hour. The two TAs, Alex Wong and Nick Carriere, were supervising the test along with Professor Aitchison.

- [10] Professor Aitchison described the method for determining attendance at the tests. A class list was printed out and sent around the room and students signed in beside their names. Two sign-in sheets were sent around, and each TA worked from one end of the room to the middle. The sign-in sheets were given to Professor Aitchison at which time he counted the number of signatures on the sheets and ensured that the total matched the number of people in the room, which it did. He kept the sign-in sheets, which were filed as exhibits in the hearing.
- [11] The sign-in sheets demonstrate that Mr. M████ did not sign in on either sheet on February 6, 2012. A student named A████ M████ did sign in on that date.
- [12] After the test, Professor Aitchison collected the test booklets, counted them, counted the number of bodies in the room and the number of signatures to ensure that all the numbers matched, and then took the booklets to his office. There he ensured that there was no problem with the test, for example, no generalized misunderstanding of the questions. Once he sampled the examinations to make sure of this, the TAs marked the tests in a period of about a week. The marked tests were brought to Professor Aitchison, and spot checked by him to ensure that the marking scheme had been appropriately applied. The marks were then made available to students. A list of students with their student IDs and grades was marked as an exhibit, and demonstrated that there was no grade assigned to Mr. M████ for the test. This tells Professor Aitchison that the student was not at the examination.
- [13] A████ M████ did write the test and received 20 out of 20 or 100%. Professor Aitchison advised the Panel that Mr. M████ later dropped the course.
- [14] After the tests were marked, Professor Aitchison returned them to the TAs who redistributed them to the students at their tutorials.
- [15] Professor Aitchison testified that after class on April 2, 2012, Mr. M████ came and told him that there had been an error with the first class test, in that it showed that he received a zero when in fact he had received 20 out of 20. He asked Professor Aitchison to correct the mark from zero to 20 and showed him a copy of the examination paper. Professor Aitchison told Mr. M████ that he would like to check the examination and take it with him to investigate. Mr. M████ said he needed to study from it and did not want to give Professor Aitchison the original. Professor Aitchison and Mr. M████ together went to the office where Professor Aitchison asked his assistant to make a copy. She made a copy and Professor Aitchison took the original and gave the copy to Mr. M████. The original

test that was given to Professor Aitchison that day was filed as Exhibit 9 in the proceedings.

- [16] Professor Aitchison testified that when he got the test, he checked the attendance list and saw that Mr. M[REDACTED] had not signed in. Professor Aitchison examined the paper and noticed that it looked like the name had been changed. When he used a magnifier, he could see evidence of a change to the name.
- [17] Professor Aitchison then identified an email that he had sent to Mr. M[REDACTED] on April 3, 2012 which said that he was writing to follow-up on the request to have the test mark entered into the system, that it appears that Mr. M[REDACTED] was not present for the test, and he asked that Mr. M[REDACTED] make an appointment to come and see him to review the situation. Professor Aitchison also asked that Mr. M[REDACTED] bring the original of his mid-term paper because by the time this meeting was occurring (early April 2012), Professor Aitchison had had a similar encounter with Mr. M[REDACTED] about the mid-term examination, which had been held on February 14, 2012. In that encounter in late February, Mr. M[REDACTED] had told Professor Aitchison that his mark had been incorrectly entered into the system and that it should have been a 36 out of 40 and not a 25 out of 40. The mid-term paper looked genuine and Mr. M[REDACTED] had attended the examination, so Professor Aitchison had changed that mid-term mark in late February.
- [18] At the meeting that resulted between Professor Aitchison and Mr. M[REDACTED], which took place on about April 12, 2012, Mr. M[REDACTED] gave an email to Professor Aitchison which had Professor Aitchison's email incorrectly typed out (it was missing one of the "i"s in Aitchison). That email was dated Tuesday, April 3, 2012, the day that Professor Aitchison had sent Mr. M[REDACTED] the email asking for the meeting. It stated *"This is to bring to your knowledge that I submitted my mid-term 1 for missing marks on BB yesterday but there has been an error. I wasn't supposed to submit that request to you. I am taking eight courses this term and I just mixed another issue with ECE318 mid-term 1, too much stress resulted in this confusion. Can you please let me know a date and time when I can come and meet you."*
- [19] The contents of the April 12, 2012 meeting are not permitted to be used in the hearing, and Professor Aitchison did not testify about the contents of the meeting other than to say he received the email set out above on that day.
- [20] A further meeting followed between Professor Aitchison, the Dean's Designate, Professor Carter, and Mr. M[REDACTED] at which Mr. M[REDACTED] admitted the offence. At that meeting, Professor Aitchison testified that he said nothing about the penalty that Mr. M[REDACTED] would receive if he admitted the offence, and neither did anyone else. He testified that the student seemed nervous, uncomfortable and quiet at that meeting.
- [21] In cross-examination by Mr. M[REDACTED], Professor Aitchison agreed that there were 96 students in ECE 318. Mr. M[REDACTED] suggested to Professor Aitchison that Professor

Aitchison was unable to prove that it was Mr. M [REDACTED] who gave him Exhibit 9 (the original of Class Test 1), and that there was no other proof that it was him, other than Professor Aitchison's word.

- [22] In re-examination, Professor Aitchison testified that since Mr. M [REDACTED] had first approached him in late February about the mid-term examination, he recognized him when he approached him again on April 2, 2012. He testified that although he asked the mid-term to be brought back, it never re-appeared.
- [23] The University called Nick Carriere who was one of the TAs and a supervisor of the test. His testimony confirmed, and indeed ultimately this was not disputed by Mr. M [REDACTED], that Mr. M [REDACTED] was not in the room at the time of the test and did not sign in for the test. Mr. Carriere indicated that he entered the grades of Class Test #1 on Exhibit 7, and that if no test was written, there was a blank space where the mark would otherwise appear. He testified that he verifies both the name and the student number of each student as they sign in.
- [24] Mr. Alex Wong, the second TA in the course and a PhD student in the Faculty of Applied Science and Engineering, was also called by the University. Mr. Wong identified two emails, one from Mr. M [REDACTED] to him dated March 13, 2012 and his reply to Mr. M [REDACTED] that followed on the same date, several hours later.
- [25] Mr. M [REDACTED]'s email said *"Hi Alex, this is to bring to your knowledge that my marks from Quiz 1 don't show on blackboard. I confirmed from a friend, he says his marks do show. I have my Quiz 1 with me if you want me to bring it to your office. Can you please check that for me as soon as possible. Awaiting your reply. Regards, C [REDACTED] M [REDACTED]; [REDACTED]"* Mr. Wong, in his response, confirmed that the Class Test #1 marks should be posted and advised Mr. M [REDACTED] that he should contact the Professor if his mark is missing on blackboard.
- [26] In cross-examination, Mr. M [REDACTED] suggested to Mr. Wong that the emails were made up. The Panel took the unusual step of having Mr. Wong pull the emails up on his computer. Mr. Wong was able to retrieve both the original email from Mr. M [REDACTED] on its own, as well as the chain of emails that included his reply to Mr. M [REDACTED].
- [27] Mr. M [REDACTED] spent some time cross-examining Mr. Wong, suggesting that the email looked abnormal on his computer. Mr. Wong testified that there was nothing unusual about how the emails were displayed. Ultimately, Mr. M [REDACTED] suggested directly to Mr. Wong that the emails were made up, which Mr. Wong denied.
- [28] Professor Carter then testified that he was the Dean's Designate assigned to this case. He met with Professor Aitchison and the student on April 25, 2012 and Ms Haugan prepared notes and minutes of the meeting. He advised that if a matter ends at a meeting between him and a student, there is a range of sanctions he is entitled to give out, from a warning

to a suspension. Mr. M[REDACTED] was aware that he could bring someone to the meeting and chose not to. Although the meeting with Professor Aitchison had been informal, Mr. M[REDACTED] was advised that this was a formal meeting, that notes would be taken and could be used at a later time. Professor Aitchison then went through the details of the allegation. Mr. M[REDACTED] appeared initially uncomfortable with admitting the offence and then said he wanted to get this over with and wanted to graduate. Professor Aitchison had the test paper with him and Mr. M[REDACTED] admitted the offence. Professor Carter advised Mr. M[REDACTED] that a sanction would be imposed but did not tell him what the sanction was at that meeting.

- [29] By correspondence dated May 2, 2012, Professor Carter sent a sanction letter to Mr. M[REDACTED]. On May 7, 2012 Mr. M[REDACTED] responded disputing the information in the sanction letter and advising that he was following with legal action.
- [30] On July 5, 2012, Professor Carter wrote to Mr. M[REDACTED] setting out his understanding that after being notified of the sanction, Mr. M[REDACTED] has decided to withdraw his admission. Therefore, Professor Carter requested that the Provost lay a charge and proceed in a formal way. A letter to Professor Hillan, Vice-Provost, also dated July 5, 2012 requesting that a charge be laid was also attached. Professor Carter also identified Mr. M[REDACTED]'s ROSI record and that of Mr. M[REDACTED], which indicated that Mr. M[REDACTED] dropped ECE 318 on February 7, 2012.
- [31] When cross-examined by Mr. M[REDACTED], Professor Carter agreed that nothing was signed at the meeting by Mr. M[REDACTED]. He testified that normal procedure is that if a student admits the offence at that meeting, Professor Carter accepts that admission. Professor Carter stated that Mr. M[REDACTED] had indicated that he had wanted to "get it over with" and "out of the way" and that he was guilty. The meeting lasted about 15 minutes.
- [32] Professor Carter testified that he believed minutes of the meeting were accurate and he agreed with the statement that said: "Mr. M[REDACTED] indicated that he wanted out of the problem right away; that it would be difficult to prove that he hadn't done anything wrong. He also stated that he just wanted to graduate in two months, so was admitting to everything, without wanting to discuss any details."
- [33] Professor Carter testified that Mr. M[REDACTED] said that he was guilty, but did not discuss the details.
- [34] The University's final witness was Diane Kruger, Forensic Document Examiner. The Panel qualified Ms Kruger as an expert forensic document examiner, able to provide an opinion on alterations, erasures or obliterations present on the cover of Exhibit 9 (the original Class Test #1), and if there were alterations, erasures or obliterations, she could opine as what was written there previously.

- [35] Ms. Kruger explained the tests to which she had subjected the original Class Test #1 document that she had been given. She testified that nobody gave her the name or student number of any person other than Mr. M[REDACTED] who was in ECE 318 and she did not know the name or student number of anyone else in that course.
- [36] Ms Kruger testified that in the area of the letters and numbers on the front page of the test booklet, where Mr. M[REDACTED]'s name and student number appeared, she could see that under the ballpoint pen there seemed to be erased pencil writing. She described at length the tests to which she subjected the documents and testified that no tests provided any information that were inconsistent with any other test. Under the blue ball point of Mr. M[REDACTED]'s student number, she saw a faint grey-black writing consistent with erased pencil marks. There was no evidence that any ink had tried to be erased. Remnants of the pencil were decipherable and when she subjected the numbers to tests, there were clearly visible numbers using the stereo microscope. The information underneath the name was not as good as the information underneath the student number. She testified that she could tell that the name had the following letters in it: an "r", "h" or an "m", a "j" or "u", and an "n". The student number that she said was underneath Mr. M[REDACTED]'s student number was most probably [REDACTED]. The panel has other evidence that shows that this is Mr. M[REDACTED]'s student number.
- [37] During cross-examination, Mr. M[REDACTED] attempted to cross-examine Ms Kruger on a different document, to which University counsel objected. The Panel was advised that the week before, there had been an order made by a Proceedings Chair that University counsel was to deliver his expert report (that of Ms. Kruger) by February 13, 2013 and that if Mr. M[REDACTED]'s expert did not attend at the hearing, he may not be permitted to testify. The Panel was advised that Mr. M[REDACTED] and his former lawyer, Mr. Goodman, had received a report from a forensic document examiner in Michigan on February 18, 2013 at 2:50 p.m. by email. No arrangements had been made to have him appear at the hearing, either in person or by any kind of video conferencing. On February 20th, the report was delivered to Mr. Centa minutes before the hearing. Further, it was in draft form and unsigned. The Panel was advised that it was in draft form in case there were any changes that Mr. M[REDACTED] or his former counsel wished the report writer to make.
- [38] The Panel ruled that while Mr. M[REDACTED] was free to ask questions of Ms Kruger from information that he had learned from the report of his expert, he could not tender the report and could not refer specifically to the report in his cross-examination. Mr. M[REDACTED] then proceeded with a few questions for Ms. Kruger about the state of the original document.
- [39] The Provost closed its case, after which Mr. M[REDACTED] testified in his own defence.
- [40] He testified that he did not write the test, and his position was that the University had not proven that it was him who approached Professor Aitchison and Mr. Wong to give him the mark 20 out of 20 on the test. He testified that in fact he was not the one who handed

the paper in and he had a feeling that Mr. M[REDACTED] did it. He said that he and Mr. M[REDACTED] had been friends but were not anymore, that the two of them had some personal issues which he did not describe in any detail.

- [41] Mr. M[REDACTED]'s evidence was that he did not write the test and did not submit the test, and only got the email chain between him and Mr. Wong last week, even though the case has been going on for ten months. The email to Professor Aitchison did not show up in any in-box and there were contradictions in the University's case and unsatisfactory disclosure.
- [42] He testified that in the meeting with Professor Carter, he did not get to see the test, that it was a "super short" meeting, that he did not say that he committed the offence, but that he was saying "yes" because he wanted to "get out of it".
- [43] In cross-examination, he admitted that the email address on Exhibit 10 is his correct email address, that he sent the email message at Exhibit 14 (Tab 18) from that address and yet in respect of the email at Exhibit 12 to Mr. Wong (Tab 15), he said that it was not sent from his email address. He did concede that the email to Mr. Wong contains his correct student number but reiterated his point that it was "an abnormal" email.
- [44] Although everyone had seen the email in Mr. Wong's in-box this evening, Mr. M[REDACTED], in cross-examination, denied that it was there. He agreed that he received the email from Professor Aitchison but said he did not respond because he did not know what it was talking about. He thought it would be better to talk face to face, so he went to the meeting and told him that he didn't know what Professor Aitchison was talking about.
- [45] He was adamant that it was not true that he had admitted the offence, and that it was not true that he had committed the offence, otherwise there would have been no point in him fighting this case for ten months.
- [46] He denied handing the email set out in paragraph 18 of these Reasons to Professor Aitchison and said he did not write the email. He denied asking Professor Aitchison to re-grade his mid-term or increase the grade for Class Test #1.

Decision of the Tribunal

- [47] The Panel agrees with the University that the evidence is compelling, clear and cogent that Mr. M[REDACTED] knowingly falsified a document, and that he knowingly circulated or made use of the Class Test #1 in an attempt to improve his mark.
- [48] The evidence in support of this conclusion is compelling. First, the Panel notes that the evidence that Mr. M[REDACTED] did not write the test was substantial and unambiguous. That is, had Mr. M[REDACTED] taken the position that he did write the test, the Panel would not have accepted such a statement. The procedures testified to by Professor Aitchison and the

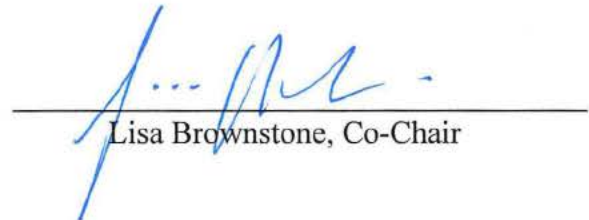
Teaching Assistants were clear and it was obvious that only the students who had signed into the test had indeed written the test that day.

- [49] The emails from Mr. M[REDACTED] to Mr. Wong and back to Mr. M[REDACTED] were straightforward; they were sent from and to Mr. M[REDACTED]'s correct email address and contained his correct student number. The contents were self-explanatory. The Committee has no hesitation in finding the emails were sent from and to Mr. M[REDACTED], notwithstanding Mr. M[REDACTED]'s attempts to characterize them as "abnormal" or "bogus".
- [50] Professor Aitchison described his meeting with Mr. M[REDACTED], and indicated that he recognized the student as the same one who had asked him to alter the mark on his mid-term examination.
- [51] Professor Aitchison was also clear that the student wished to keep the original of the document, but that he had not acceded to this request. Professor Aitchison sent an email to the student's email address, which the student acknowledged receiving, indicating that they should discuss the situation and asking that the student bring the mid-term examination. The email that Professor Aitchison identified as having been given by the student at that meeting was printed off from the student's address, but contained an incorrect spelling of Professor Aitchison's name, so that he only received it in hard copy at their April 12 meeting. The contents of the two emails, and the student's desire to keep the original paper, all support the University's case.
- [52] Mr. M[REDACTED]'s admission in the meeting between Professor Carter and Professor Aitchison is of limited assistance to the Panel; the Panel acknowledges that it is possible that Mr. M[REDACTED] said not much more than he would admit the offence to get it over with.
- [53] Ms. Kruger, through forensic analysis, determined that Mr. M[REDACTED]'s name was written in ink over erased pencil which contained Mr. M[REDACTED]'s student number, and certain letters consistent with Mr. M[REDACTED]'s name. Mr. M[REDACTED] had indeed received 20 out of 20 on the test. The Panel was left with no doubt that Mr. M[REDACTED]'s name and student number had been written over those of Mr. M[REDACTED].
- [54] All of this evidence taken together is clear, cogent and convincing that Mr. M[REDACTED] did not write the first test, and approached both Mr. Wong and Professor Aitchison with Mr. M[REDACTED]'s test in an attempt to get a mark of 20 out of 20 for himself on the test that he had not written.
- [55] The Panel finds the standard of proof set out in *F.H. v. McDougall* is more than met in this case. For Mr. M[REDACTED]'s story to cast any doubt whatsoever on the University's clear evidence against him would require the Panel to believe the following: that someone sent emails, with Mr. M[REDACTED]'s student number, from his email account to Mr. Wong; that someone else took an examination paper written by Mr. M[REDACTED] and wrote Mr. M[REDACTED]'s name on it, having erased Mr. M[REDACTED]'s name and student number, gone to Professor

Aitchison and asked him to give Mr. M [REDACTED] the mark in that test, for no apparent reason. The Panel does not believe that any of that occurred. The University's evidence was clear and compelling. Each of the University's witnesses testified in a calm, straightforward manner; their evidence was consistent with one another and with the documentary evidence. All of the documentary evidence supported both the oral evidence of the University's witnesses and the University's theory of the case.

- [56] Thus, the Panel finds that Mr. M [REDACTED] committed the offence set out in paragraph [3](1) of these Reasons contrary to s. 8.1.1(a) of the Code.

Dated this 15th day of March, 2013



Lisa Brownstone, Co-Chair