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CONTENTS

GENERAL NOTICE

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Report

to

The Minister of Education

Professor K Asmal, M.P.

Independent Assessor's Report

on the investigation at

the University of Durban Westville

October 2003

Report

to

The Minister of Education

Prof K Asmal, M.P.

On the inquiry undertaken by the Independent Assessor, Dr Bongani Aug Khumalo, under the terms of reference set out by the Minister in relation to the University of Durban Westville, in terms of S.44 of the Higher Education Act, 1997 (Act No. 101 of 1997), as amended.

The Independent Assessor was ably assisted by Mr Hugh Amoore, Registrar, University of Cape Town.

Preface

This report represents the conclusions of the Assessor. It is necessarily based on a limited view of the University of Durban Westville, a national asset and, as I saw, very much a going concern. An assessor is independent, and I was received with courtesy at all times, and had the full co-operation of those I worked with.

Contents

Chapters

Appendices:

Chapter I

The Terms of Reference of the Inquiry

1.1. The terms of reference are set out in appendix I. The purpose was clearly stated, as to advise the Minister on the source of discontent, and steps to be taken to restore proper Governance and promote reconciliation at the University of Durban-Westville (UDW).

1.2. I have concentrated, for reasons that I hope will become apparent, on questions of Governance and executive management accountability, and on UDW's preparation for the merger.

1.3. The inquiry began by a visit to UDW on 25 September 2003, following a briefing by senior officials of the Department of Education on 15 September 2003 and a planning meeting on 20 September 2003. A second visit followed from Sunday 12 to Tuesday 14 September 2003. A member of the Council was interviewed in Johannesburg. In all 26 interviews were conducted and 32 individuals were interviewed, some twice. Written submissions, and documents submitted to me ran to several thousand pages. I was given access to several files relevant to my inquiry.

1.4. Appendix II contains a list of those interviewed. My attempts to interview Professor E Mantzalis of COMSA, Mr R Ramdas, the General Secretary of the SRC, Mr Thulani Dube, the President of the SRC, and Professor M S Maharaj were unsuccessful. Professor Mantzalis, on behalf of COMSA did make a written submission. Telephone conferences were held with Mr Ramdas and Mr Dube.

1.5. Appendix III contains a list of the documents submitted to, or obtained by me.

1.6. The PWC report

A parallel inquiry, of particular relevance to my mandate, was commissioned by the UDW Council in August 2002, to address nine issues relating to Governance raised by a Council member, Associate Professor Anand Singh. This inquiry was undertaken by Price Waterhouse Coopers Forensic Services (Pty) Ltd (PWC). The report, dated 25 September 2003, together with supporting documentation, was made available to the Assessor. This report forms part of the documentation on which I made my observations. While necessarily limited in scope, this PWC inquiry was thorough and requires attention.

1.7. The KPMG report

The public revelation of overpayments made to the Vice-Chancellor led (at a late stage) to KMPG, the audit firm that performs the internal audit function at UDW, to undertake a review of the Executive Payroll. Dr Magau arranged for a copy of this report to be made available to me, as I was completing my inquiry, and reference is made to this in the relevant sections.

Chapter 2

The University of Durban-Westville: A Going Concern and an Important National Asset

The University of Durban-Westville in 2003 gives the impression to the visitor of a thriving institution of higher education. Record enrolments in 2003 have put pressure on the institution as a whole, but the institution has responded to these pressures. The Deans have pointed to the fact that in the current year – by way of contrast to most years in its turbulent history – UDW has lost no academic time. This impression was confirmed by the evidence I found. This is an institution that faces the realities of dealing with large numbers of academically under prepared students, and with large numbers of students who simply do not have the financial means to benefit from public higher education without support. UDW will not always succeed, but there is a collective will to do so, and seriousness about the institution's academic purpose.

Dr Saths Cooper, as Vice-Chancellor deserves to be credited for bringing that sense of focus and stability that prevails at the administrative level of the institutions.

Professor Ramashala was cited a number of times during the investigation for her building of a strong administrative management foundation, with sound systems and processes, especially as far as financial management is concerned. Dr Cooper seems to have enhanced this condition. Dr Cooper is seen as having managed to get and keep the buy-in and motivation of the different sectors of the university community.

The Assessor identifies for much praise the Registrar of the University, Dr E Mneney, as a highly competent, diligent and dedicated servant of the University and its community.

UDW will take, and must be placed in a position to take, these strengths into the to-be-merged institution. **There was a clear chorus throughout the investigation; that UDW must go into the merger as an equal partner and not be submitted to be incorporated or taken over by the University of Natal.** This sentiment has the sympathy and support of the Assessor. The way that the Governance problems that plague the institution are resolved must render the University able to restore and retain its stature and pride as it goes into the merger.

Chapter 3

Governance; The roles of the Council and the Vice-Chancellor

The Higher Education Act, 1997 is very clear in assigning the Governance of a public higher education to the Council, and the executive authority to the Principal (or Vice-Chancellor).

The University of Durban-Westville is a public higher education institution under the Act, and under a statute promulgated in terms of the Act. The Council, currently chaired by Dr Namane Magau, is constituted in terms of these instruments. The Vice-Chancellor, Dr S Cooper was appointed unusually, but in the light of the merger that is intended to take place on 1 January 2004, between UDW and the University of Natal, for a one-year period, from 1 January 2003 to 31 December 2003. He is supported by two Deputy Vice-Chancellors, Professor K Satyapal and Professor L J Nicholas, whose terms of appointment as Deputy Vice-Chancellors run to 31 December 2003.

Before delving into the issues of internal relations it is appropriate to reflect on two aspects of Council; membership on the one hand, and the way a council must operate, on the other.

In the first instance, however elected or appointed, and by what body elected or appointed, each member of a Council of a public higher education institution is a member of the Council, not a representative of the appointing or electing body. He or she does not come into the Council with a mandate from and does not report back to the appointing or electing body. This applies to those members appointed by the Minister, as much as to any other members. The fiduciary responsibility of the member is to the institution, and it is the institution's best interests that must guide him or her or that he or she must serve and protect.

The foregoing is not to say that the appointing or electing body is irrelevant. Councils are structured in particular ways for good reason. The members chosen by a particular constituency or body bring different perspectives to the deliberations of the Council, and the variety of perspectives adds richness. So, for example, people drawn from civil society as Ministerial appointees bring to the Council's deliberations the perspectives of people in civil society; students do the same; so do members chosen by academic staff, or by administrative and support staff. The Council does not function like a stakeholder bargaining forum because members were drawn from certain sectors or organizations.

Secondly, and following from this members of a Council must accept collective responsibility if the Council is to function well and if there is to be proper and effective Corporate Governance. The present and recent lessons of the corporate world, locally and globally and the roles of individuals in corporate boards, are directly applicable in the Councils of our public higher education institutions.

This has two consequences. First, where serious differences arise within a Council, the Council has a duty to resolve them. Secondly, it is inappropriate for members brought to Council by any one body to run off to that body and report issues whenever unsuccessful in getting their way in Council. Of course, there may come a time when such a report, or resignation, is justified. During 2003 the frustrations of many Council members have led them to report these frustrations to the Minister. On the evidence I have the Minister acted properly and consistently in referring these matters back to the Council and its Chair. The University is an autonomous institution. The Minister has no powers to tell the Council what to do. He has residual powers in the public interest, in terms of the Higher Education Act, 1997 to appoint an Assessor, or to appoint an Administrator, and he has powers in relation to public funding, but these powers are not uncircumscribed. Regrettably the perception seems to have formed in

the minds of some at UDW that certain members of Council had, or have, the ear of the Minister and were thus more equal than their peers in the Council.

The relationship between a governing body and its chief executive officer is important, and is often subtle. In a university there is perhaps, an added layer of complexity, arising from the Vice-Chancellor's position among his or her Senate colleagues as primus (or prima) inter pares. But there are fixed points. The Council must govern, the Vice-Chancellor must manage, and the Vice-Chancellor must account to the Council for the management of the institution.

This imposes a particular onus on the Chair of the Council, inter alia to act as the main informal link between the Council and the Vice-Chancellor, in ensuring that the Council buys into the principle of collective responsibility for Council decisions, and ensuring that all relevant information is placed before the Council to enable it to reach an informed decision, to paraphrase but some of the roles and functions of a Chair set out in the King II Report on Corporate Governance.

In the sections that follow I examine these relationships and roles, as they have played out at UDW in 2003.

Chapter 4

Failures of Governance and of Management Accountability.

4.1. It is the Assessor's finding that the Council of UDW is not able to effectively govern the institution, and that the executive team (the Vice-Chancellor and his two deputy Vice-Chancellors) has systematically failed to observe due process, failed to heed the provisions of legislation (the statute of UDW and the Higher Education Act) and failed to hold itself accountable to the Council or abide by its decisions. Corporate Governance is severely undermined or compromised and transgressed.

4.2. The Assessor has also found that this failure of Governance has more to do with the actions, or lack of action, on the part of the executive team, than with the Council as such. Many members of the UDW Council do their best and give selfless service in the public good, in the fine tradition that is an important feature of the Governance of our public higher education institutions. Collectively though the Council of UDW is divided, weakened and dysfunctional.

4.3. In this chapter I examine a range of issues that has led to these findings.

The Institutional Statute of the University of Durban-Westville

4.4. The institutional statute of UDW is an old item of Governance, dating as far back as 1986 and amended over the years. A version, incorporating the amendments of 1991, 1995, 1996 and 1999 has been compiled and is in general use in the Registrar's office. This and the Higher Education, 1997 (Act No 101 of 1997 as amended) form the constitutional basis for the Governance of UDW. By its nature this Statute does not cover all issues and areas (e.g. the provisions regulating Convocation were deleted

by the 1999 amendment, maybe unintentionally or unwittingly, with the result that following the repeal of the University of Durban-Westville Act, 1983 there is no exact statutory reference to Convocation). Dr Cooper recognised this, and told Council at its January 2003 meeting that the framing of a new statute would be fast-tracked. If this had been done quickly, and if it had addressed the gaps and the areas where the statute was defective, it would have been a job well done.

The issue has regrettably become contentious. The "fast-track" has proved slow and expensive. As the 2003 draws to a close, UDW still does not even have a draft revised statute, and has incurred very considerable expense. The Vice-Chancellor has been put under pressure internally as a result. As a response to this, he has told this Senate that

"this is now foreseen as a merger cost, as Council did not proclaim the amended statutes, and management sees no purpose served in any changes to our statute at this stage. No account has been received in this matter.....".

The PWC report has demonstrated that the last claim is wrong and misleading, and that Dr Cooper had personally approved payment of the first accounts for this work. The Assessor is therefore baffled as to how this can be seen to be a merger cost, given that the drafts prepared in this process, and shown to the Assessor, are unlikely to assist the envisaged merged University in framing its institutional statute.

This exercise has clouded issues of Governance. It has also potentially clouded merger issues.

Appointments and Elections to the Council of the University of Durban-Westville

4.5 The election of members by donors

Dr Cooper found vacancies in the constituency of donors at the start of 2003. Steps should have been taken by the previous administration to ensure that these vacancies were filled by 1 January 2003. That had not happened. Dr Cooper correctly insisted that these vacancies be filled.

The statute (and previous practice) specifies who (individuals, trusts, and legal personae) are donors, that the donors choose two donors to be members of Council, and that the process, for which the Registrar's office is responsible, provides for soliciting nominations from donors by post and, where there are more candidates than vacancies, holding a postal election.

This matter was fully canvassed in the PWC report. In brief, the rules were not followed. Dr Cooper gave instructions to Professor D K Chetty to conduct these elections telephonically. A sample of donors or donors' representatives was contacted. Two candidates were nominated and (seemingly) seconded. There were two vacancies, and the two (Mr S V Chetty and Mr U P Pillay) were elected. The elections were subsequently challenged, and an attempt was made to have the donors ratify the election. Again this process involved only a sample of donors, though it was a bigger sample than that used in the original telephonic process.

Dr Cooper then obtained Senior Counsel's opinion. This opinion concluded that the membership of Mr U P (Rajen) Pillay and of Mr S V Chetty was invalid. Senior Counsel suggested that if the Council wished them as members it could do so by appointing them under the provisions

of clause 9(1) of the Statute (where Council may choose six members). Senior Counsel was unaware that all six positions had been filled.

The PWC report shows in detail that though this opinion was in Dr Cooper's hands before the Council meeting of 7 June 2003 he did not disclose the crux of it to Council, and Messrs S V Chetty and U P Pillay continued to be regarded as members of the Council.

It was only subsequent to the PWC report that the Council, on 10 October 2003 accepted the inevitable, namely that Mr S V Chetty was not validly chosen as a member of the Council by the constituency of donors. (By this date Mr U P (Rajen) Pillay had resigned as a member of the Council.)

The Council had at its previous meeting, and following controversy over this subject, agreed a process for filling vacancies under clause 9(i). This process was, inter alia, to involve notice and a call for nominations. Notwithstanding this, and without an attempt to review and rescind that resolution, the Council promptly, proceeded at the 10 October 2003 meeting to appoint Mr S V Chetty to be a member of the Council, with immediate effect, under clause 9(i). This appointment can at least be described as extraordinary; and I believe that it is open to challenge.

This purported election, the failure by Dr Cooper to inform Council in June that the membership of two Councillors was, in the view of Senior Counsel, invalid, and the way in which Mr S V Chetty was purportedly re-appointed as a member raise concerns which are the more serious given the perceptions of many that Mr S V Chetty was in "Dr Cooper's camp," perceptions that have undermined confidence in Governance and in the functioning of Council.

Furthermore, Mr S V Chetty has been chosen as one of UDW's Council's nominees to be a member of the interim Council for the envisaged merged

university. The Assessor is not persuaded that, in the circumstances, this nomination can be allowed to stand, and I advise against it.

4.6 The Election of members of the Convocation

Dr Cooper found a similar situation in the Convocation constituency. Convocation chooses two members to be members of Council, and both positions were vacant. Again the proper process was a postal ballot, admittedly a time-consuming and expensive process. Dr Cooper and Professor Chetty decided to hold a special general meeting of Convocation. This was duly advertised, and the meeting proceeded to choose two candidates. The vacancies were contested. As the meeting was about to proceed to vote Dr Cooper intervened to prevent academic staff present from voting. He was challenged on this, but maintained his position.

The relevant section of the UDW Statute (which was repealed by a subsequent amendment in its entirety) provided that, as is generally the case in universities in South Africa, that graduates and academic staff constitute Convocation.

When Dr Cooper was asked about this, he said that he did not know that academic personnel were members of Convocation.

It is also covered in the PWC report which has shown that the proper procedures were not followed. This, and the exclusion of the academic staff electorate, have contributed to perceptions in the Council that this election was unfair, and had a manipulated outcome.

4.7 <u>The election of members by the Academic Staff and by the Senate</u>

Confidence in a governing body depends to a great extent on confidence that it is properly constituted.

It is thus a matter of concern that Dr Cooper intervened to stop the election by the academic staff of a member to be chosen in terms of clause 9(g) of the Statute, for the member of the teaching staff to be elected by the teaching staff. The details of this intervention, in June 2003, are fully canvassed in the PWC report and do not concern the brief of the Assessor, save that they show no reasonable grounds for this intervention, and a claim by Dr Cooper that the election was stopped because of major concerns raised by staff members, particularly African staff members, a claim that is not borne out by the evidence of the African Forum.

This led to a situation that has to date not yet been resolved. A fresh election was called, fresh nominations were made, but no academic staff members arrived at the polling booth to vote and no votes were cast.

That this was at least in part due to a call by Associate Professor Anand Singh to boycott the vote is unquestionable. But it is a source of serious concern, and should be a matter of grave concern to the Council, when the academic staff-members of a university respond in such a manner.

The Role of the Council in Relation to the NU-UDW Merger

4.8. The merger between UDW and the University of Natal (UN) scheduled for 1 January 2004 is the key issue of the day. It is the issue that I expected would take precedence over all the business of the Council in 2003. It has not.

The perceptions of the University community about Council's role in the merger process, as reflected to me, are best summed up in the views of the five deans whom I interviewed. Making the point that deans (at UDW) are not included in management, they told me that the deans "were having

to carry the heavy burden of the merger" and rated the Council's performance on merger questions at 4 out of 10. The academic programme was on track (a fact attested to by all) but "Council had to get its act together [with regard to the merger] because the merger must take place.

There are only several weeks left. The need for dedicated attention to merger issues by the governing body could not be more pressing. I have sympathy for the Council member who called for a merger committee at the meeting of 10 October 2003.

The role of Council in relation to the financial position of UDW

4.9. The financial health of a university is a key responsibility of a Council, and the executive accountability to the Council on financial matters is a cardinal Governance issue. I refer elsewhere to the relatively healthy financial position of UDW at the end of 2002.

The following examples show the extent to which Council has failed to exercise the appropriate degree of financial control during this year, and the extent to which executive accountability on financial matters has been absent.

Student Fees

The first was the unilateral decision of Dr Cooper in early January 2003 to issue a directive to the then Executive Director Finance, Mr Selva Govindsamy, not to implement the already approved 8% increase on tuition fees for 2003. This took place on or before 16 January 2003, in the form of a communiqué to the University community on 6 February 2003.

Dr Cooper announced that –

"Given the difficult economic climate that we are faced with, parents and guardians are experiencing severe financial difficulties and are therefore unable to meet all their financial obligations to the University. In recognition of this and as a result of representations from the President of the SRC, Mr Sihle Ngobese, and his Executive, Council approved that there would be no student fee increase in 2003."

A meeting of Council was due to take place on 24 January 2003. Dr Cooper could have taken the proposal to Council and explained the financial consequences and implications. The Investigation confirmed that Corporate Governance was transgressed in this respect.

Unbudgeted expenditure

Substantial unbudgeted expenditure was incurred in the first quarter. This was reported to the Finance Committee on 27 March 2003. The procedures ordinarily require approval from the Finance Committee in advance. As a member of the Finance Committee has drawn to my attention the Finance Committee did not approve, but merely noted this expenditure. The total involved resulted is a variance against budget of R1 122 750.

Vote of no confidence in the Chair of the Finance Committee

At the 11 April 2003 meeting of the Finance Committee, three of the members of Council who joined Council in January 2003 (Messrs U P Pillay, S V Chetty and A Ndlela) moved what amounted to a motion of no confidence in the chair, and ousted him. Key Council oversight, via the Deputy Chair of Council, of the Finance Committee was thus removed.

The 2003 Budget and Operating Results for the period to June 2003

I have reviewed the operating results for UDW for the first six months of 2003 as put to the Council in August 2003. At first sight, the results appear good. A positive variance of R12,179 million is reported against a period income budget of R141,265 million, and the increase in expenditure has been kept at R6,231 million on a period expenditure budget of R136,265 million. A more detailed look at the results showed that the income variance was accounted for by showing some 60% of the subsidy income for the year while the budget provided for 50% to be reflected in the period. A fee estimate had been made without any (let alone the historic) provision for bad debt. And no provision was made in the budget for post-retirement medical aid obligations or leave gratuity payments, allegedly because these shortfalls would be made good by the re-capitalisation process that is to form part of merger processes. And most seriously, the same argument appears to have been used to justify not providing for a liability to make good an actuarial shortfall on defined benefit retirement funds.

Mr C R Stuart and the Attitude of Certain of His Colleagues

4.10. Mr C R Stuart is a long-standing member of the Council. He has become intimately involved in its work, shouldering an unequal burden of committee responsibilities. He is committed and loyal to the institution.

This involvement and his availability have led to his becoming involved reportedly at the request of both Council and management, in activities that are the prerogative of management, and outside the bounds of non-executive Governance. Among others, one of these is that of arbiter for students with unpaid fees, which is a role referred to as the "Nupen Procedure" (after Charles Nupen who had brokered a solution some years

ago to a dispute over students and fees). He had been mandated by Council as well as management to play that role, and he did it in an honorary capacity. He has continually been asked to do this, year after year, and in the process had won the respect of students. Another one, which he told the Assessor was an error of judgment in becoming involved in the settling of an unrelated student dispute. He conceded that he had erred and entered the terrain of management.

This is background to what occurred during the first half of 2003, and culminated in Dr Cooper and the majority of the Council commissioning senior counsel to conduct an inquiry into Mr Stuart's conduct. This inquiry found that Mr Stuart occupied a "number of administrative positions" in the University (in fact these were all Council committee appointments, and none was an administrative position) and that (as I have noted elsewhere) he had raised issues with the Minister where it would "have been more appropriate for Councillor Stuart to firstly have raised these doubts at an appropriate Council meeting". The report is a long one. Its details do not directly fall within the Assessor's brief. But what it shows, taken with other actions, is that there was what amounted to a animosity and even hostility towards a Council member who tends to do what he considered was his duty as an independent Council member - asking awkward questions.

This inquiry concluded by canvassing the proper role of a Council member (or a non-executive director for that matter) in given situations. Senior Counsel advised the Council as follows;

(a) adopt a policy on how a Council member should deal with, and disclose complaints received from staff or students, or where third parties attempt to influence a Councillor to raise issues for the purpose of pursuing their own agendas;

(b) require Councillors who raise issues as a result of a complaint from a third party to disclose the fact of the complaint; and

(c) allow Councillors, for good cause, to withhold the identity of complainants, but in general to require them to disclose the identity.

These are obviously sound suggestions. They deserve consideration, perhaps as part of a code of conduct for Council members.

It has to be stressed though, that Council members, like their counterparts in corporate / company and other organisational boards ought to exercise great care not to confuse the roles of non-executive members and management. Functions must always be clearly differentiated and parameters understood and respected.

The Council and its Handling of the Report on Corporate Governance Issues Submitted by Price Waterhouse Coopers Forensic Services (Pty) Ltd.

4.11. The report by Price Waterhouse Coopers Forensic Services (Pty) Ltd was presented to the Council at a special meeting on Monday 6 October 2003. It addresses, as I have noted, nine questions raised by Associate Professor Anand Singh. The Council decided, after some debate, to allow Dr Cooper and his executive time to formulate and deliver a response. A second special meeting was held on Friday 10 October 2003. Dr Cooper and his Deputy Vice-Chancellors tabled a detailed response, which was augmented by a power-point presentation.

The report identifies important issues of Governance. Many of these are canvassed in my report. It is 130 pages in length, and it is supported by over 400 pages of documentation. Only four members of Council (apart from the Chair and the Executive) took the opportunity to take copies of

the report and the supporting documentation after the meeting of 6 October 2003. Yet, at the meeting of 10 October 2003 a majority (8 to 7 with one abstention) of the Council accepted the Vice-Chancellor's refutation of the report as incomplete and inadequate, and rejected it.

During the final interview with Dr Magau the Assessor was assured that that the reported rejection of the report did not mean that the issues have been or would no longer be dealt with. She told the Assessor that the Council would look at these issues despite the resolution. I believe that Dr Magau is sincere in this. But equally there is a body of the Council unable or unwilling to look at the evidence, and on the basis of the evidence to exercise their responsibilities as Council members. That this is the case is underlined by the comprehensive set of motions (nineteen in total) tabled at the said meeting by Mr P Olsen S.C., one of the four Council members who had taken and studied the papers.

4.12. How the Vice Chancellor Handled the Matter of Professor Mthembu

The issue of Dr Cooper's conduct in relation to Professor Mthembu was put before the Assessor by Mr C R Stuart. The issue appears to have been fully canvassed by the Council, and the Council put it to rest. It is nonetheless of importance for two reasons: one, because it illustrates the critical importance, in Governance, of avoiding both real and perceived conflicts of interest; and, two, because it created, at the very least, doubts among some Council members about Dr Cooper's commitment to proper and sound Corporate Governance, doubts that have persisted and contributed to the relationship between Dr Cooper and the Council.

This issue pre-dates Dr Cooper's appointment as Vice-Chancellor. It relates to the period during which he was both a member of the Council of UDW, and a member of the Council of the University of the Witwatersrand,

and, in the latter capacity, a member of the Selection Committee for a position, or positions, of Deputy Vice-Chancellor at that University.

Mr Stuart's evidence is to the following effect. Professor Mthembu was a deputy vice-chancellor at UDW. For reasons not relevant to my inquiry the idea of a mutually-agreed separation arose. Dr Cooper contacted Mr Stuart and proposed to him that a severance settlement be considered in the matter of Professor Mthembu. On the face of it, the suggestion was constructive, properly made by a Council member to the then Chair of the Finance Committee, as a way of resolving a problem that was clearly, a Council matter (a solution to an executive team that was not functioning well). Not long after, the severance settlement was agreed. Here I note that no copy of the severance contract appears to have survived at UDW but also, as is usual in such cases, the details of the settlement were to remain confidential. But Dr Cooper soon thereafter announced that Professor Mthembu had been appointed to a position of Deputy Vice-Chancellor at the University of the Witwatersrand, and told the UDW Council not only that he had been a member of the selection committee for that position, but also that the decision at Wits had been unanimous.

It would not have been proper for Dr Cooper to have breached the confidence he owed to the University of the Witwatersrand, or to the candidates for the Wits positions, by telling UDW's Council that Professor Mthembu was a candidate or a nominee. But, particularly as the idea of a severance settlement had come from Dr Cooper, it would, in the view of Mr Stuart and others, have been the due exercise of his fiduciary responsibility as a UDW Council member for him to have suggested to Mr Stuart that the severance settlement idea be suspended for a defined period. Had that happened, Professor Mthembu would, had he been offered and accepted the Witwatersrand position, have resigned in the ordinary way, and UDW would have been saved the cost of the severance

settlement. And, had that happened the concerns of some Council members about Dr Cooper would not have arisen.

Such issues (severance settlements in the case of members of the senior management of a public higher education institution) are important issues of Governance. I note that in the recently promulgated regulations for reporting by public higher education institutions, the details of any payment above a minimum amount in respect of any such settlement must be reported by the Council in a note to its financial statements.

4.13. Dr Cooper and his treatment of the Audit Committee

The independence of the Audit Committee from executive management, the accountability of executive management to the Audit Committee, and the sole prerogative of the Council in appointing independent auditors are so much necessary ingredients of good Governance that they are ordinarily taken as given.

The events of the Audit Committee on 7 February 2003 as described in the minutes, and as recounted to me by a Council member and the former Chief Director, Finance and Administration suggest that these essentials were unknown to Dr Cooper.

It is necessary to record that the independent auditors to UDW are Price Waterhouse Coopers, and that KPMG act as internal auditors to UDW. Until the end of 2002 the Chair of the Audit Committee had been a Mr A Z Dlamini. His firm merged with KPMG at the end of 2002, and as a result he resigned form the Audit Committee (because of conflict of interest.) He attended the first meeting in 2003 to hand over.

Dr Cooper attended this, his first meeting. He raised a series of questions and asked the Audit Committee why it had not addressed seven

listed issues, indicating that as Accounting Officer he needed to be better informed about these issues. A debate followed, and he was invited to put these issues in writing. He was then called away, but before the meeting ended, sent in a letter to the Committee advising them as follows–

"Further to my intervention at the meeting of the Audit Committee this morning, please be advised that I have decided to call for proposals with respect to the external audit of the University. The firms that have been associated with the University are invited to submit proposals. I am reviewing the internal audit function and the necessity for using an outside audit firm for this purpose. I shall make a decision shortly."

4.14. Governance and the determination of the remuneration of Dr Cooper

The past three years have seen increasing public interest in the compensation of the senior management of our universities and technikons, and the Minister of Education has recently promulgated regulations requiring full disclosure. This has followed the debates in the private or business sector, the requirements in other jurisdictions and now in South Africa for full disclosure of executive pay by listed entities, and a sharper focus on the Governance issues associated with executive pay.

As I note elsewhere, the subject of the compensation of Dr Cooper's predecessor was much debated in and out of UDW's Council in 2002.

The UDW Council's delegated authority document gives the Remuneration Committee of Council the authority to determine the Vice-Chancellor's remuneration. And there was an expectation that once fixed, the details would be reported to the Council. In fact a request for this was made as early as 24 January 2003.

Dr Cooper's contract is dated 12 December 2002, and he took office as Vice-Chancellor on 1 January 2003. Though the Remuneration Committee did not meet, the Chair of the Council acted on its behalf, having consulted one of its members (Mr G J Thula). The Committee was called to ratify the terms, and met in teleconference on 27 June 2003, with Dr Cooper present. This occurred despite Mr Krish Govinder (as Deputy Chair of Council) having expressly asked to be involved in finalizing the contract.

Four aspects of this are disturbing.

First, the copy of the contract that I have comprises four pages and a schedule.

The contract is in the form of a letter. It is signed by Dr Magau, and each page is initialed by her and by Dr Cooper. It states, on Page 1, that the remuneration package will be as per the attached Annexure "A". The attached document, however, is –

a) not initialed by Dr Magau (which given her general meticulousness I find surprising) or Dr Cooper;

b) is not labeled "A"; and

c) sets out a range, which is higher (at the maximum) than that previously approved but gives no indication where in the range Dr Cooper is to be paid.

I have Dr Magau's assurance that her decision was to use the maximum of the approved range. The contract gives no indication of this.

From an audit perspective it is unhelpful.

Secondly, the contract provides for a performance-related bonus of up to 50% of the basic salary component of the package where performance is to be assessed against specific objectives and benchmarks to be agreed to by the Council and Dr Cooper. The problem with this was not so much the quantum (though this took the package well above Council's previously stated maximum) nor the idea (which, if well-defined and properly-managed could have been beneficial to UDW) but in the fact that it was not until a further full meeting of the Remuneration Committee, held on 22 August 2003, that the first draft of key performance areas against which, or on the basis of which, Dr Cooper's performance was to be assessed, and on the grounds of which he would be paid a bonus or not, was tabled, immediately following which the draft was handed out to Council members during the Council meeting that took place from 17H10 on that day.

I attribute this to the lack of disclosure. Had the contract details been reported to the Council at its 24 January 2003, key performance areas would probably have been set in time for these to constitute meaningful targets for the year, related to UDW's major challenge of the period, the merger process. The force of this observation should not diminished by the fact that Dr Magau did discuss some performance objectives with Dr Cooper on 24 January 2003.

Thirdly, and curiously, the contract includes the following provision relating to the Vice-Chancellor's university-provided residence: "Kindly note that any fringe benefit taxation in this regard is payable by the University". This provision would appear to be unenforceable and contrary to public policy. Mr Sivi Chetty suggested to me that the South African Revenue

Services (SARS) had provided a directive to this effect, but I was unable to obtain a copy of any such directive. But the inclusion is curious because the provision is not in the versions of the contract submitted by Mr Selva Govindsamy to Dr Magau, the second of which was as late as 5 December 2002.

Fourthly, and more curious still, were the actual payments made to Dr Cooper, and the ways in which Dr Cooper interpreted certain provisions of his contract –

(i) the structure of the package set out in the unsigned attachment to the contract is different from the structure as implemented (e.g. he is not covered by the UDW medical aid, and is paid the cash value of this) and there is no indication – even in the July and August meetings of the Remuneration Committee that the new structure has the approval of the employer;

(ii) he was, according to my calculations, overpaid a total of R108 002 in the eight months January to August (at the rate of R8 636 per month for two months, and at the rate of R16 561 per month for six months) of which R94 999.98 was recovered in September after these facts had, in point, become public knowledge, but was then in the same month of September paid an amount of R28 450 in respect of housing;

(iii) Dr Cooper claims not to have noticed this;

(iv) Dr Cooper appears to have interpreted his contract as allowing his sons to travel with him at UDW expense, or, if his protestations after this payment was challenged, are accepted, to have regarded UDW as a bank on which he could have credit for such costs.

There is another Corporate Governance aspect to this question. The circulated minutes of the Remuneration Committee meeting of 22 August 2003 deal, in paragraph 6, with the Vice-Chancellor's salary and package and contain the following –

- "the package was lower than the previous Vice-Chancellor's";
- "the Chair had negotiated with Dr Cooper and finalized this matter after Mr Govindsamy had consulted with relevant members" (my emphasis)

The Assessor was given the draft minute prepared by the responsible official. It does not contain any information or material confirming either of these claims. They seem to have been added to the minutes subsequently, but prior to circulation. They are misleading at best: Dr Cooper's package, at maximum, that is with bonus, is substantially higher than that of the previous Vice-Chancellor (and there is no recorded reason why it should be). The correspondence of November and December 2002 makes it very clear that Mr Govindsamy did not consult the relevant members of Council, namely the members of the Remuneration Committee. It was not his place to do so. But he did, twice, and in writing suggest that they be consulted. They were not, by Mr Govindsamy or anyone else.

4.15. The Investec contract and the legal action brought by Professor Ramashala against UDW, Dr Cooper and others

In March 1988 UDW entered into a structured finance facility agreement where by it borrowed money from Investec Bank (Mauritius) Limited, and deposited the net amount (the capital borrowed, less a commission) with

Investec Bank Limited. This investment was made on the authority of UDW's Finance Committee, and after UDW had had the benefit of the advice of its attorneys and its independent auditors. This agreement matured on 24 March 2003, and UDW had the option to renew it on new terms. UDW decided not to, and realized a profit on the transaction of R1 405 192.16. While positive, this was less than half the return that was held in prospect at the time the agreement was entered into. The investment was disclosed in the annual financial statements.

The Assessor understands that the University of Natal entered into a similar agreement.

It is understood that these agreements rely on taxation laws as they stood, and still stand, and on the exemption from income tax that public higher education institutions enjoy.

The issue of the Investec Contract is of relevance to my inquiry for three reasons. I have relied on the comprehensive report on this subject by Adv H Kessie Naidu, SC instructed by Hofmeyer Herbstein & Gihwala Inc, attorneys (of 7 August 2003) and the Price Waterhouse Coopers (PWC) report (see elsewhere, of 25 September 2003).

First, it is my view that Council's authority should have been sought for this investment, by the previous Vice-Chancellor, because of the risks involved, risks that could have been adequately managed but nonetheless were material. The borrowing was approved by the Finance Committee, but ex post facto.

Secondly, the propriety of the transaction, and questions as to whether anyone at UDW profited from the R700 000 commission charged became a matter of public interest following press reports on 18 and 23 May 2003

and E-TV interview of Dr Cooper on 28 May 2003. Let it be placed on record that there is no suggestion, or evidence, that anyone at UDW was enriched from the commission. As a result of that interview Professor Ramashala launched proceedings against Dr Cooper, UDW and others (connected to E-TV). Though these matters are not yet, and may never reach the stage of being *sub judice,* comment on the merits of the proceedings would both be inappropriate and unnecessary. What is of concern is that Dr Cooper had been expressly asked by the Chair and Deputy Chair of the Council to refrain from referring to or verbally attacking Professor Ramashala; yet on 28 May 2003 he did precisely this.

The Investigation was told that this request was to protect Professor Ramashala, and was made by "the clique in the Council" that was loyal to "the previous dispensation". Counter-views were also given that there was no merit in such a suggestion and that the request was indubitably *bona fide*, and made in the best interests of UDW.

Chapter 5

The Vice-Chancellor, Dr S Cooper

5.1. The impact of Dr Cooper on UDW since assuming the Vice-Chancellorship

It is clear that Dr Cooper's impact was part positive and part negative on UDW since assuming the Vice-Chancellorship.

First, the positive. Dr Cooper's arrival as Vice-Chancellor was clearly important and symbolic; the return of a UDW student who had clashed with the regime in control of UDW at the time of its existence as a separate development institution, for Indians, governed by Whites in the Apartheid environment. He was, as a student leader told us: "one of our own". In the words of a submission I received, which were echoed comments by supporters and detractors alike there has been, since his "arrival .... concrete (sic) evidence of a rejuvenation of a culture of learning, exchange of ideas, debates and openness that has never taken place at this institution". Deputy Vice-Chancellor Professor Satyapal made the point that UDW has a record enrolment and that the academic programme or "the academic enterprise" has been undisturbed this year. The Deans whom I met confirmed this with authority and credibility. One of them spoke, appreciatively, of Dr Cooper as a leader, not a manager. He is credited as having established a relationship of trust with the student leadership.

The evidence presented to me was that whereas the senate had in recent years been both dysfunctional and ignored. Dr Cooper had restructured the senate and caused it to work. He had also reconfigured the faculty structure, for the better.

These are important achievements. Well worth recognizing. The evidence presented to me though presented a flip side to this cover. Dr Cooper was brought across as manipulative, surrounding himself with carefully chosen acolytes (in Council, in the Executive, and other parts of the institution) and as having given insufficient attention to the key strategic issue of the day (the merger, his primary mandate for 2003).

5.2. Dr Cooper and the appointment of Associate Professor L J Nicholas

The appointment of Lionel Nicholas to the position of Deputy-Vice Chancellor (Strategic Development), the determination of his remuneration, and the provision of his contract purporting to give him a position at UDW beyond 31 December 2003 all raise issues that bear upon my terms of reference, and each suggests a disregard by Dr Cooper of process, of accountability, and of the roles of chief executive officer on the one hand and of the Council on the other.

Dr Cooper and Professor Nicholas have a long record of professional collaboration, that includes work in the then Family Institute in the early 1990's. Dr Cooper regards him highly. It would not have been unreasonable, except in the pre-merger position of UDW, for Dr Cooper to have sought to propose to the Council an executive team of people in whom he had confidence and with whom he could work. Such a proposal would nevertheless have had to follow due process. And even in this pre-merger context it would not have been unreasonable for Dr Cooper to have asked the Council to allow a departure from its clear decision that the posts (including those of Deputy Vice-Chancellor) should be filled from within the ranks of UDW, as a chief executive officer must be allowed to put together proposals for his or her team.

But Dr Cooper did not seek the authority of Council.

Professor Nicholas was at the time a member of the staff of the University of the Western Cape (UWC), where he had responsibilities for counseling services.

The Higher Education Act, 1997, recognises the importance of senior management appointments in public higher education by providing expressly that the Institutional Forum must advise the Council on such appointments. The Statute of the University of Durban Westville lays down the process for the appointment of a vice-principal or deputy vice-chancellor; the appointment is to be made by a majority of the members of the Council at a meeting of the Council. There is good reason for this. In the contemporary university the Vice-Chancellor and his or her Deputy Vice-Chancellors are the Chief Executive Officer and his or her deputies, and have to balance their managerial responsibilities in complex organizations with leadership in a collegial context. They are the equivalent of executive directors in public companies. In companies board decisions (or board-level decisions by non-executive directors) for such appointments have as much particular importance as the Council.

In this case

(a) no attempt was made to engage the Institutional forum (the reason given to me was that the Institutional Forum was not functioning);

(b) the Selections Committee appointed by the Council (24 January 2003) was not convened. The Selection Committee appointed by the Council included the Chair and the Deputy Chair of Council, with the proviso that the Council could

make a substitution, for example should an appointed member not be available. Mr Krish Govender is the Deputy Chair of the Council. He was not invited. In place of Mr Govender and the Chair who was not available, the Selection Committee that sat included Mr Sivi Chetty and Mr U P Pillay. It is reported elsewhere on the manner in which Mr Chetty came to be a member of the Council, initially in January 2003, and subsequently in October 2003;

(c) though the Council's 24 January 2003 recorded decision was that : "All positions should be filled internally prior to any external advertisement/recruitment", this was ignored, and without there being any public advertisement an outsider's name was introduced by Dr Cooper, and this outsider was invited by the Vice-Chancellor's office for an interview;

(d) though the Council's 24 January 2003 recorded decision was for specified Deputy Vice-Chancellor positions, one of which was for the portfolio of Finance, Administration and Support Services, and though the Council, noting the need for some flexibility had nonetheless decided that reports on appointments in terms of the organogram be made to Council, and that any changes to the organogram be presented to the Council.

- Professor Nicholas was appointed; and

- The appointment was that of Deputy Vice-Chancellor (Strategic Development).

The Selection Committees that led to this and other appointments met on Friday 14, and Saturday 15 February 2003. The Selection Committees had not canvassed the idea of a portfolio of strategic development, but had left the configuration of a position to Dr Cooper. There obviously is a difference between responsibility for strategic development and responsibility for finance, administration and support services and it is a difference that a Council might wish to know more about, understand and agree. This Council was not consulted. The Chair of the Finance Committee was not consulted. But on the Monday, 17 February 2003, Dr Cooper made a public announcement to the University. This announcement was of the appointment of Professor Nicholas to this newly configured position of Deputy Vice-Chancellor.

The Council of UDW has set out detailed delegations of authority. These are set out in a comprehensive but user friendly 57 page document which was approved by the Council in September 2001. I have evidence that a copy of this document was given to Dr Cooper by the then senior financial officer, Mr Selva Govindsamy, in early January 2003. In fact Dr Cooper should have had a copy in his role as a Council member prior to this date.

This document gives to the Remunerations (sic) Committee authority "to finalise on behalf of Council the compensation of executive managers: For the present purposes I will assume, as appears to have been the case, that this term embraces the Vice-Chancellor and the Deputy Vice-Chancellors.

Executive remuneration at UDW has been a serious matter. The question of Professor Ramashala's remuneration took up much Council time during 2001 and 2002, and received more press coverage that the best ordinary interests of UDW would have called for. The need for due process and transparency, in settling executive remuneration that is always critical issues as far as good Governance is concerned, were important at the start of 2003.

The Council had, in 2002, set bands within which executive remuneration was to be fixed. Dr Cooper presented these to the Senate. I was given a schedule (undated and unreferenced) purporting to set out these decisions. This is attached to the report as Appendix IV.

Dr Cooper proceeded to fix the contract for Professor L J Nicholas. The contract is relevant to my inquiry in two particulars. First, Dr Cooper fixed Professor Nicholas' remuneration at (marginally above) the maximum of the band for the position without so much as consulting or, even after the event, informing the Remuneration Committee or its Chair. This he had no authority to do. Secondly, he provided in the contract that –

> "Upon termination of this appointment, unless otherwise precluded, you may assume a substantive academic/administrative post at the level of Director on the terms and conditions applicable to the said post at the time of resumption (sic) ...."

Dr Cooper neither sought authority to do this (he did not have this authority, as this involved expenditure not budgeted and a post not established) nor did he inform the Council or the Chair of Council that he had done so.

This is surprising given the Council's commitment to the merger and to making no commitments that would extend beyond 31 December 2003. When I put these issues to Dr Cooper he was dismissive, arguing that as the compensation was within the scales there was no need, and that it would have been unreasonable to expect Professor Nicholas to abandon his position at UWC without security of tenure.

Now, the impression was created, and there is evidence that Dr Cooper made a statement to create this among many at UDW that Professor Nicholas had been seconded to UDW by UWC.

A more serious and entirely false impression was created by a second statement made by Dr Cooper to his Council about Professor Nicholas' remuneration. At a special meeting of the Council on 14 March 2003 (labeled an Emergency meeting, to which the internal Council members were not invited, convened for the specific purpose of addressing concerns raised by a member about Governance, and which proceeded despite the absence of a quorum a fact that does not appear to have been noticed) Dr Cooper is quoted as having informed the Council as follows :

> "..... That while Professor L J Nicholas was also an external appointment, his salary was paid by the government and at the end of his contract he would either revert to his previous substantive position, or he could apply for any of the positions that would become available in the new (merged) University"

The "paid by the government" claim was challenged at a subsequent (25 April 2003) Council meeting. In response to that challenge Dr Cooper is recorded as explaining that "what this meant was that his salary was paid by the fiscus".

Prof Lionel Nicholas' previous substantive position was at UWC. A member of the UDW Council who was unaware of the provisions of Professor Nicholas' contract, (and apart from Dr Cooper every member was unaware), could be forgiven for deducing from this that "at the end of his contract" meant 31 December 2003, and that his previous UWC position remained open for him to return to. How else could he revert to it? What else could he revert to? He had no previous UDW position.

What am I to make of the impression left on a Council member by Dr Cooper's claim that Professor Nicholas' salary was paid by the government, later corrected

to a claim that his salary was paid by the fiscus? What impression did Dr Cooper intend to leave with his Council?

The fact of the matter is that the cost of Professor Nicholas' appointment is met in whole by UDW; there never was any suggestion that the government (the State?) or the fiscus (in any form) would meet it.

I asked Dr Cooper about this. He responded by telling me that his meaning was obvious; everyone would know that this meant UDW, because UDW was funded by the taxpayer, from the fiscus.

Would they?

5.3. Dr Cooper and his friends, and Dr Cooper and the SRC

Dr Cooper has persuaded a significant number of able people to join the UDW Council. That is to his credit. Unfortunately, as in the case of his recruitment of Professor Nicholas the way some of the appointments have been made has created the perception that he has surrounded himself with friends and old associates; this is especially the case with the appointment of Mr S V Chetty.

Allowances for SRC members appear to have a long history at UDW. There are good grounds for codifying policy on this subject; students play an important role in the internal structure of a university, but they are not staff, and their role depends upon their independence.

Price Waterhouse Coopers has documented the case of suits, shirts and shoes purchased by UDW on Dr Cooper's authority so that as he put it they would not feel out of place at his March installation as Vice-Chancellor. Further comment is simply unnecessary.

5.4. Dr Cooper, and the suspensions of Associate Professor Kanthan Pillay and Anand Singh

Professor P S (Kanthan) Pillay was appointed to be the Executive Director for Finance for the year 2003. He had previously been a member of the Council. Professor Anand Singh was a member of Council. He is a leading member of one of the UDW staff bodies, the Academic Staff Association (the ASA).

Professor Singh and Pillay were co-signatories to documents presented to Council, dealing with issues of Governance that led the Council to commission an inquiry by Price Waterhouse Coopers Forensic Services (Pty) Ltd. These documents were submitted in early August 2003.

Professor Singh was the subject of a telephone tapping operation that led to details of a private conversation between him and the Vice-Chancellor of the University of Natal, Professor W M Makgoba, being made available to the Sunday Times, and to a Sunday Times reporter on 25 August 2003. I do not have the date of this discussion, and I do not know when the parties involved were made aware of it. I have established that Dr Cooper presented a transcript before the Council meeting of 22 August 2003.

On 15 August 2003 Dr Cooper charged both Prof Pillay and Prof Singh with misconduct and suspended them.

It is the view of the Assessor that proceedings in these matters must be allowed to run their course, and that it is in the interest of all that they be completed without delay. It is not, as has been inferred, the role of the Assessor, to interfere in anyway in such matters.

However, the suspensions were relevant to my inquiring for two reasons. Coming at the time that they did, they created the perception that Dr Cooper was silencing his critics. This perception was fuelled by press reports (Mercury, 21 August 2003; Daily News 21 August 2003, which headlined its report by asking – "What is he (Dr Cooper) up to? UDW puzzled by sudden suspensions"; and the Mail and Guardian, 22 August 2003). This has undoubtedly contributed to the deteriorating situation, to the erosion of confidence and trust that a Vice-Chancellor must enjoy.

But the suspensions also raised questions of Governance and of administrative justice. The terms of the suspension effectively deprived Professor Singh of his rights as a member of the Council, yet this was done in the exercise of his discretion by Dr Cooper, without reference to the Council or its Chair or without any attempt by Dr Cooper to give reasons to the Council as to why he had suspended Dr Singh. These questions of Governance are dealt with in some detail in a letter sent to Dr Magau by a concerned Council member (Mr P J Olsen, SC) on 19 August 2003. Dr Magau did not respond. Dr Cooper did. Copies of this correspondence are annexed as appendix VI. In his reply Dr Cooper says that Council "will be appraised of (the charges against Professor Pillay) at its next meeting". There is no record in the Council minutes of any such appraisal.

The UDW Human Resource Policies and Procedures document – a concise and comprehensive document of Council policies – gives the Vice-Chancellor discretion to suspend (i.e. suspension in the case of a staff member facing charges of misconduct is not automatic) and a discretion to set the conditions of the suspension. It was thus in the exercise of this discretion that Dr Cooper effectively prevented Professor Singh from attending the senate meeting of 20 August 2003, the Council meeting of 22 August 2003 and subsequent Council meetings. I am not in a position to judge the (legal) competence of these acts. But I do believe that Dr Cooper ought, in the interests of good Governance, to

have given the Council the reasons for imposing a suspension order that prevented (or purported to prevent) Professor Singh from attending meetings of Council. This obligation is the more important, because Dr Cooper did not inform Dr Magau of the charges against Singh and Pillay, or their suspensions before or at the time.

5.5. Security contract, and allegations of bugging

Allegations of listening devices, wire-tapping and spying are not new on the UDW campus. They have arisen at many times during the University's forty year, turbulent history. I have been told of allegations of bugging during the tenure of Dr Cooper's predecessor.

Any form of internal espionage is inimical to the ideal of a University. Academic freedom is a right protected in the Constitution. It can only flourish in institutions where fear and suspicion are absent, and where there is no restriction on the scholarly pursuit of ideas, and no limitation on the rights of individuals to express these ideas.

It is for these reasons that I am concerned by the current allegations of bugging. These allegations, and the attendant fears to which they have given rise, to the extent of paranoia, have been fuelled by :

(a) the facts that the telephone of a member of the staff, Associate Professor Anand Singh, who is also a member of Council, a member of Senate, and a leading figure in the Academic Staff Association was tapped, that the transcript of a conversation that he had with Professor Magoba subsequently came into the possession of Dr Cooper, and that the recording of this conversation came into the possession of a Sunday Times journalist;

(b) the procurement by Dr Cooper and Professor Nicholas of services provided by one Jasper or Jaftha on behalf of Samrak Security Systems cc (Samrak), alternatively Secure Africa cc ck 95/13501/123.

This entity (which I will assume to be SAMRAK) has been paid an initial amount of R174 000 for 29 consultations at R6000 per consultation in the period June to August 2003. Such reports as it may have submitted have been oral (per Professor Nicholas). I have not, nor did Price Waterhouse Coopers, establish any but vague descriptions of what services SAMRAK rendered, other that that they provided evidence used in the disciplinary proceedings against the previous head of security (again, per Professor Nicholas).

An allegation was made to me that SAMRAK's agent, Jasper, paid frequent visits to Professor Nicholas, and that during these visits tape recordings were played. This allegation was based on a third party report allegedly made by three different people who heard tape recorders playing during such visits. I put this allegation to Professor Nicholas. He denied that he and Mr Jasper had ever listened to tape recordings in his office.

A second allegation was put to me that Professor Nicholas had, on a pretext, obtained the keys to the telephone exchange. My attempts to interview Professor Maharaj on this and other matters were unsuccessful. But Professor Nicholas conceded that he had obtained these keys and told me that this was necessary for security reasons.

I put the allegation about bugging to Professor Nicholas. He told me that he did not believe that there was any foundation to the allegations because "in the process of sweeping the campus we have secured nothing." Furthermore he told me that Dr Cooper had offered to assist Professor Singh in having the bugging of his home telephone investigated.

Professor Dasarath Chetty had been told of allegations of bugging. As the official responsible for public affairs these were of more than passing interest to him. What appeared to him to be corroborating evidence had come in the form of a telephone call from an acquaintance who was also a colleague of Jasper's, and who assumed (because of Chetty's management position) that he would be party to Jasper's mandate. He therefore approached Professor Satyapal and told him of his concerns. This was on the Friday (22 August) before the Sunday Times (24 August) made public the fact of the bugging of Professor Singh's home telephone. He then saw Dr Cooper, who told him that he would get "Derik" to check the campus. Professor Chetty assumes that this "Derik" was Derik Jasper (or Jaftha) of SAMRAK. He was subsequently told that nothing was found.

I asked Dr Cooper about these issues. On the bugging of Singh's home telephone he said that it was up to Singh to take the matter up with the authorities if he believed that a crime had been committed. On the question of bugging on the campus he told me that he had arranged for "sweeping (of the campus) by the Presidential Unit". On the subject of the SAMRAK contracts he told me that the campus had not been, and was now, a safe place for students.

The PWC Forensic Services report covers aspects of the initial payments to SAMRAK. These payments were approved by Professor Nicholas and Dr Cooper. The statement on which payment was made was not a VAT invoice, and no VAT or Company/Close Corporation registration details appear. Payment was made against the security hire budget for 2003 (cost center 0500, account 1178).

The investigative powers of the Assessor are limited. I have been unable to get any further on these allegations, or find out who bugged Professor Singh's home telephone, but

(a) many of those whom I interviewed required assurances from me that I had taken precautions against bugging, attesting to the perceptions and fears of many;

(b) I am convinced that these issues need to be resolved urgently.

The Assessor takes the view that necessary steps must be taken by UDW management to ensure that this matter is reported to the SA Police Services (SAPS) to ensure the investigation of the bugging of Professor Singh's home telephone by the appropriate State authorities. The Chair of Council, Dr Magau has told me that the Council has given a directive that this be done.

Secondly, the suspicion will not go away until full details of the services and reports provided by SAMRAK are put before the University, and satisfactory reasons are given as to why an entity, sourced (as the Investigation is told) through proper procurement processes, expects payment on a statement of account that fails to meet the basic requirements of a tax invoice.

Chapter 6

The position of the Chair and the position of the Registrar

Dr Namane Magau has chaired the Council through this very difficult process. The relationship between a Chair and a Chief Executive Officer depends fundamentally on trust. On the basis of that trust the Chair supports the Chief Executive Officer, giving him or her the space he or she must have to put his or her stamp on the organisation. This Dr Magau has done.

Dr Edith Mneney occupies the position of Registrar. She has, by all accounts, persevered valiantly in near-impossible circumstances. As secretary to Council she has functions akin to those of a company secretary. Dr Cooper acknowledged this to us, and suggested that UDW had undervalued the role. I believe that the King II definitions of the role of a company secretary have applicability here. Two of these are relevant: to ensure unhindered access to information by all Board (Council) members, and to ensure that the procedure for the appointment of all Board (Council) members is properly carried out. In the UDW of 2003 it has, as far as I can establish, become the norm for bulky papers to be distributed during Council meetings by the executive while they are being presented, leaving Dr Mneney (who is not privy to them in advance) unable to carry out the first of these roles. And in the processes for Council appointments the role (and authority) she should have had has been taken away from her on three occasions (the election by donors, the election by convocation, and the setting aside of the election by academic staff).

Chapter 7

Recommendations

Context

7.1. The following recommendations are made against the background of the fact that the Council has achieved very little in the course of 2003 on the matters of the merger with the University of Natal (UN). Many issues remain to be addressed at the University of Durban Westville (UDW), to allow the University's constituent parts to be full players that they deserve to be in the intended merged institution.

The Council of UDW hardly focused on the merger in its deliberations in the course of the year, while much work seems to have been done by management in this regard, including productive interactions with UN. Given good, decisive and focused leadership, it is possible to finalize the merger exercise, on the basis of such work.

The foregoing does not mean that this Council has not been doing its hefty share of institutional leadership work. It has. While it dealt with a full annual agenda of Governance issues of the institution, a lot of its energy and time was squandered by the division, and acrimonious factionalism that has come to define the highest Governance structure as well as the management and certain parts of the community of UDW. This institution is one of the premier universities of our country, with a proud heritage.

Notwithstanding the above, the option was considered whether the merger could not be brought forward by two months and the interim council made to commence its term early, as a solution to the Governance crisis at UDW. It was decided against that approach as it would deprive UDW of the opportunity to get into the merger as an equal partner.

This is a Council whose term, like that of the Vice-Chancellor and the Deputy Vice-Chancellors, will expire at the end of the year (about two months from now). **The members of the Council of UDW include some well-known, highly reputable, able, respected South African citizens of stature, who avail themselves to serve as a way of their national duty through such public institutions as universities.** Much appreciation and gratitude is due Dr Namane Magau and the majority of her Council colleagues.

There have been, regrettably, serious shortcomings and transgressions of institutional Governance. These need to be addressed with decisiveness and urgency.

7.2. It is recommended that :

(a) the Council be dissolved and that the Minster appoint an administrator to take charge and carry out the Governance and executive / management responsibilities, accountability and functions as soon as possible in terms of the Higher Education Act, 1997 as amended;

(b) the Minster enjoin this Administrator to give priority to preparing UDW as a whole, and its constituent parts, for the merger that should proceed as planned and intended to take effect on 1 January 2004;

(c) the Minister tasks this Administrator to urgently conclude a suitable arrangement with the Vice-Chancellor, Dr Cooper to allow for the conclusion of the relationship between UDW

and Dr Cooper as soon as possible, taking cognizance of the fact that Dr Coopers contract ends on 31 December 2003.

(d) the Minister tasks this Administrator to determine whether the provisions of the contract entered into between the Vice-Chancellor, Dr Saths Cooper and the Deputy Vice Chancellor, Professor Nicholas, purporting to give him a right to an appointment beyond 31 December 2003, binds UDW or the new merged University and handle this matter in the best interest of the University;

(e) the Minister gives particular attention to the need for those members of the Interim Council appointed in respect of UDW to carry legitimacy and credibility in the UDW community;

(f) the Minister tasks the Administrator to review the findings of PWC forensic audit report and to take the necessary steps to rectify the specific administrative and governance shortcomings identified in the report, in particular, in relation to the payments and gifts and/or other provisions such as suits for the members of the SRC. This is necessary in the light of the fact that my investigation did not allow for a full appraisal of the PWC report, although I have drawn on the report in terms of my findings, conclusions and recommendations;

(g) the Minister tasks this Administrator to ensure that the disciplinary processes with respect to Professors Singh and Pillay are proceeded with and properly concluded without undue waste of time. **This means that their suspensions would stay in force until the process is concluded**;

Appendix 1

TERMS OF REFERENCE

of the

MINISTER OF EDUCATION

to the

INDEPENDENT ASSESSOR TO CONDUCT AN INVESTIGATION INTO THE AFFAIRS OF THE UNIVERSITY OF DURBAN-WESTVILLE

PREAMBLE

In terms of the Higher Education Act, 1997 (Act No. 101 of 1997), as amended, an Independent Assessor may be appointed by the Minister of Education to conduct and investigation at a public higher education institution. Section 45 of the Higher Education Act identifies the cases where an Independent Assessor may be appointed:

45 Cases where independent assessor may be appointed

An independent assessor may be appointed under section 44 if -

(a) the council of a public higher education institution requests the appointment; or

(b) circumstances arise at a public higher education institution that-

(i) involve financial or other maladministration of a serious nature; or

(ii) seriously undermine the effective functioning of the public higher education institution; or

(c) the council of the public higher education institution has failed to resolve such circumstances; and

(d) the appointment is in the interests of higher education in an open and democratic society.

The current circumstances at the University of Durban-Westville suggest that there are serious problems in the governance and management of the University, which may be impacting on the effective functioning of the University. In particular, events over the past months point to a growing lack of confidence in the structures of the University to govern and manage the University in an accountable manner. This is indicated by the fact that governance relationships are strained, in particular, the Council is divided. In addition, there is a pervasive sense that there are serious management deficiencies as reflected by the resignation and suspension of senior staff.

In this regard, I, Professor Kader Asmal, MP, have decided to appoint an Independent Assessor as I am satisfied that the circumstances contemplated in section 45(b), (c), and (d) are met.

TERMS OF REFERENCE

1. TERMS OF REFERENCE: GENERAL

The general purpose of the investigation is to advise the Minister on:

- the source and nature of the discontent at the University of Durban-Westville; and
- steps required to restore proper governance, including the promotion of reconciliation, at the University of Durban-Westville.

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The independent assessor must inquire into and report to the Minister on any issue which he may deem of importance, including the following:

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- **The role and functioning of the Council**

  The processes and structures of the Council necessary for decision making and accountability appear to have been eroded. This has resulted in the inability of the Council to provide the necessary governance oversight and to hold the management accountable for its activities and actions in relation to, amongst others, the impending merger; staff appointments and disciplinary procedures; pending legal cases and financial expenditure.

  The membership of the Council is subject to question, in particular the nomination processes for the appointment of representatives of certain constituencies.

  The procedures for dealing with the remuneration of the Vice-Chancellor.

- **Management**

  There are serious questions about the role and modus operandi of the management of the University that appears to be contributing to a prevailing climate of fear and suspicion, not conducive to an academic environment. The resignation and suspension of senior staff may be a manifestation of the problems in the management of the University.

Management's perceived disregard for the policies and processes of the University in the appointment of senior staff and in the procurement of the services.

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- what action, if any, ought to be taken.

4. COMPLETION AND REPORT

The Independent assessor must complete his work and submit a report to the Minister within 30 days of commencing duties.

PROFESSOR KADER ASMAL, MP
MINISTER OF EDUCATION

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INTERVIEW CONDUCTED BY THE INDEPENDENT ASSESSOR

A. Interviews on 25 September 2003.

1. The Chair of Council, Dr Namane Magau together with a selected group of external Council members Mr G J Thula, Mr T Ngwenya, Coucillor I Naidoo, and Mr S Chetty.

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3. Dr E Mneney, Registrar

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10. Associate Professor Anand Singh, suspended member of the Academic staff and a member of the Council.

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Professor Sathi Moodley, Dean of Commerce

Professor James G Mowatt, Dean of Law

Professor Donald P McCracken, Dean of Humanities

(Professor J Ojewole was not able to be present)

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16. Mr L Windvogel, Chair of the Institutional Forum

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22. Mr A Ndlela, Council member

23. Mr M Ngcobo, General Secretary of the UDW Convocation

24. Professor P Pillay, Professor of Mathematics and formerly a member of the Council

25. Professor D V Soni, former acting Deputy Vice-Chancellor responsible for merger issues.

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26. Mr P Mkhize, Member of the Council

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28. (by telephone) Mr Rivas Ramdas, General Secretary of the SRC and a member of the Council of UDW

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Appendix IV

UNIVERSITY OF DURBAN WESTVILLE

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UDW council 'dysfunctional'

KRISENDRA BISETTY

THE council of the University of Durban-Westville – the institution's highest decision-making body – is "divided and dysfunctional" and should be dissolved immediately.

That's the shock viewpoint of several members, including its vice-chairman Krish Govender, who yesterday laid bare his frustration and anger about recent happenings at UDW, saying the council did not have the ability to govern university affairs.

Govender is KwaZulu-Natal's State Attorney and was hand-picked by national Education Minister Kader Asmal to serve on the council two years ago.

In an exclusive interview with the *Daily News*, he said he felt he had "no alternative but to resign". He also says others plan to do likewise.

Govender says recent events at UDW require the government's "urgent attention" and says the atmosphere on campus "is getting a bit nasty".

UDW is due to merge with the University of Natal in January and Asmal is supposed to announce a joint interim council before then.

Govender says an element of "gangsterism" is creeping in, with some council members who spoke up for justice and truth being physically threatened. "They are very much afraid," he said.

Several academics have had to compromise their integrity, he said, by either remaining silent or condoning some of the irregularities, claims Govender.

Some of the things going on at UDW are unbelievable ... The council should be dissolved

The final straw for Govender was when the council last week rejected a PriceWaterhouseCoopers (PWC) report it had commissioned to investigate management and governance concerns at the institution.

"Some of the things going on at UDW are unbelievable," he said. "I regard the council as dysfunctional ... The council should be dissolved."

Of the PWC investigation and report, which the university rejected as being "partial, limited and incomplete", Govender said the fact that it wasn't to the liking of the very people who asked for it was a "severe indictment".

Last month, Asmal appointed an independent assessor to investigate UDW management. But the university challenged the decision, urging the minister to hold off until the PWC investigation was complete.

Govender, who believes the report is proof of "clear wrongdoing and irregularities", says "a proper council with principles would not have allowed management to do what it has been able to do".

Another vocal council member, Roy Stuart, who has served the body for the past 25 yea says he was threatened by fellow council member.

Stuart, who feels the coun is "not legitimate", says colleague also asked "whethe have good security at home".

Says UDW councillor Mkhize: "If the minister d n't take appropriate step don't see myself continu here."

UDW council chairwon Dr Namane Magau, had responded to several *D News'* messages by late night.

□ Full story: Page 6

Annexure V

Appendix VI

Tel No. (031) 301 1749
Fax No. (031) 307 6532 / 304 9922

E-mail: olsen@law.co.za

Thirteenth Floor
6 Durban Club Place
Durban

19th August 2003

P.J. OLSEN SC

The Chair, Council of the University of Durban Westville
Dr N. Magau

Per Facsimile: 011 7142071

Dear Dr Magau

RE: PROFESSOR P. S. PILLAY AND PROFESSOR ANAND SINGH

Yesterday I received a telephone call from the Vice Chancellor to advise me that he had faxed to me copies of the letter of 15th August 2003 addressed to Professor Pillay and the notice of disciplinary enquiry addressed to Professor Singh, so that it might not be said that members of the council were being left out of the loop. I must say that his decision in that regard was a laudable one, and I hope that all council members were briefed in a like manner. Dr Cooper and I had a long telephone conversation which ranged far beyond the matter he telephoned me about. After that call I read the documents, and they have caused me no little concern.

PROFESSOR ANAND SINGH

(a) Charges 3 to 7 (inclusive) of the charges of which Professor Singh was given notice have to do with his conduct within Senate and within the Council.

(b) In my view the control of business within the Senate and within Council is a matter for the Senate and Council respectively. Those two bodies should be left to discipline their own as regards what goes on in meetings.

(c) I have no idea of what the employee disciplinary rules and procedures say regarding the employment of such procedures in respect of proceedings of the Senate or Council. However I would be most surprised to learn that such a disciplinary body has jurisdiction in such matters.

(d) I appreciate that the University as a whole has an interest in seeing that its employees (and especially senior employees) do not conduct themselves in an unseemly fashion in connection with University affairs. But the Council is Professor Singh's employer. If there is any jurisdiction given to a disciplinary body convened under the rules, then it seems to me to be contemptuous of Council (in the legal sense) for proceedings before such a body to be instituted without first consulting Council, when the charges relate to the conduct of affairs before Council. I do not regard the charges relating to the Senate in any different light.

(e) Insofar as charges 1 and 2 are concerned, I know very little about the background to them. They may or may not warrant further investigation. A reading of them suggests that they cannot possibly support a decision to suspend an employee as senior as Professor Singh, and to prohibit him from entering the University otherwise than in connection with the disciplinary proceedings.

(f) I do not have access to the provisions of the Disciplinary Code which are referred to as authorising the suspension in question. If suspension is discretionary, then that discretion has in my humble opinion been wrongly exercised. If, on the other hand, for some technical reason it is compulsory,

then, bearing in mind Professor Singh's membership of the Council, it is simply untenable that the charges were laid without first consulting the Council.

(g) I am compelled to ask you to intervene if you have the authority to do so. If you do not have that power I am compelled to ask you to make urgent representations to Dr. Cooper to take action. In either case it is my respectful view that the following steps should be taken.

(i) The suspension of Professor Singh should be lifted immediately.

(ii) Unless Professor Singh himself insists that they should go on, the disciplinary proceedings should be adjourned until after this weekend's Council meeting.

(iii) Whatever else happens, steps should be taken to ensure that there is no obstacle to Professor Singh's attendance at the Council meeting this coming Friday and Saturday. It is hardly without significance that Professor Singh is a principal signatory to the notice of governance issues to be discussed at the meeting.

PROFESSOR P. S. PILLAY

(a) As Dr. Cooper pointed out to me in our telephone conversation yesterday, Professor P. S. Pillay is the person who presented the 2002 Financial Statements to the last meeting of Council. (You will appreciate that I am still struggling to put names to faces and positions.) I had the distinct impression that Professor Pillay had done a good job and I saw no sign of mistrust in

Professor Pillay emanating from Council members far more aware of university affairs than I am.

(b) The allegation that Professor Pillay is guilty of "poor work performance" accordingly comes as a matter of some surprise.

(c) Insofar as the remaining allegations are concerned they are very serious indeed. Whilst "misconduct" can mean anything, the suggestion that Professor Pillay is guilty of "fraud committed against the University and breach of (his) fiduciary duty to act in the interests of the University" comes as a shock to me.

(d) Again, Professor Pillay has been suspended. I must assume that very startling and fresh information concerning Professor Pillay came to hand between 4th August 2003 and 15th August 2003. After all, if that was not the case, and the University executive was conversant with some of this information before the meeting of 4th August, one would assume that it would not have been impliedly represented to the Council that we could rely upon Professor Pillay's presentation of the financial statements, and the answers he gave to the questions posed by various members of Council.

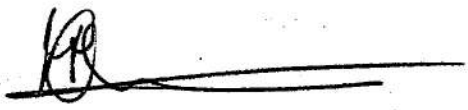
(e) The position as regards Professor Pillay must obviously be clarified as a matter of urgency. I would imagine that he is and has been a central player in merger discussions on the crucial topic of finance. To lose a man in that position at this crucial time looks disastrous.

(f) I must ask you to ensure that the Council, in its capacity as employer of Professor Pillay, receives a full and proper report of the circumstances which gave rise to the letter of 15th August 2003, and of the standing of the matter as at 22nd August 2003. It seems, with respect, that Professor Pillay's

position is so crucial that the decision as to whether he should be suspended should have been left to Council. However, if the allegations brought to Dr. Cooper's attention were so serious as to warrant immediate action, then the question of whether or not the suspension should be maintained should be considered by Council in the light of progress made with investigations by Friday.

I am forwarding a copy of this letter to Dr. Cooper. Bearing in mind the urgency of this matter, I believe that I would be disrespectful of him if I did not allow him an opportunity to consider the representations I am making to you.

Yours sincerely



P. J. OLSEN SC

Vice Chancellor
UNIVERSITY OF DURBAN-WESTVILLE
PRIVATE BAG X54001
DURBAN 4000
SOUTH AFRICA
TEL (031) 204-8000
FAX: (031) 262-2192
E-mail: vc@pixie.udw.ac.za

19 August 2003

Adv P. J. Olsen
13th Floor
6 Durban Club Place
Durban
4001

FACSIMILE TRANSMISSION: 031-307 6532

Dear Adv Olsen

Your facsimile of 19 August 2003 addressed to the Chairperson of Council, which you copied to me refers:

1. Prof A. Singh was suspended and charges proffered against him, in terms of the Employee Rules, because his conduct interfered with the management and administration of the University. The internal disciplinary enquiry is scheduled for Friday at 08:30 in terms of the LRA and precisely to enable Prof Singh to respond to the charges before the Council meeting.
2. Numerous charges (largely brought to my attention last week) have been brought against Prof P. S. Pillay, which Council will be appraised of at its next meeting.

As you are aware, I, as the CEO of the institution, am responsible for the efficient management and administration of the institution and have acted in the best interests of the institution and in accordance with powers vested in me.

Yours sincerely

S. Cooper

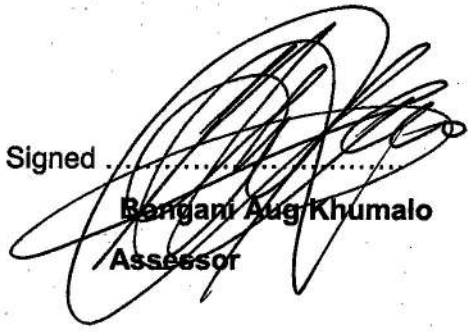
Dr S Cooper
Vice-Chancellor

cc. Chairperson of Council: Dr N. Magau

(h) the Minister refer to the South African Police Services (SAPS) for possible investigation of the activities of SAMRAK Security Services and Secure Africa cc, Mr D Jasper or Jaftha, and of any related entities or individuals (within and outside of UDW) to establish whether there are grounds to bring prosecutions against one or more of them, or other parties, in respect of VAT compliance, company law, the ECT Act, or any other legislation regulating wire-tapping or the interception of electronic communication; and

(i) a programme be formulated by the Ministry to provide Governance training and induction to university councils in the same way that boards of directors in well led companies are given Corporate Governance and education.

It is important to recognize that individuals make themselves available to serve/to do national or public duty through certain Governance structures of public organizations and in that way put themselves under serious and at times severe scrutiny.



Signed .....

Bongani Aug Khumalo

Assessor

Appendix 1

TERMS OF REFERENCE

of the

MINISTER OF EDUCATION

to the

INDEPENDENT ASSESSOR TO CONDUCT AN INVESTIGATION INTO THE AFFAIRS OF THE UNIVERSITY OF DURBAN-WESTVILLE

PREAMBLE

In terms of the Higher Education Act, 1997 (Act No. 101 of 1997), as amended, an Independent Assessor may be appointed by the Minister of Education to conduct and investigation at a public higher education institution. Section 45 of the Higher Education Act identifies the cases where an Independent Assessor may be appointed:

> **45 Cases where independent assessor may be appointed**
> An independent assessor may be appointed under section 44 if -
> (a) the council of a public higher education institution requests the appointment; or
> (b) circumstances arise at a public higher education institution that-
> (i) involve financial or other maladministration of a serious nature; or
> (ii) seriously undermine the effective functioning of the public higher education institution; or
> (c) the council of the public higher education institution has failed to resolve such circumstances; and
> (d) the appointment is in the interests of higher education in an open and democratic society.

The current circumstances at the University of Durban-Westville suggest that there are serious problems in the governance and management of the University, which may be impacting on the effective functioning of the University. In particular, events over the past months point to a growing lack of confidence in the structures of the University to govern and manage the University in an accountable manner. This is indicated by the fact that governance relationships are strained, in particular, the Council is divided. In addition, there is a pervasive sense that there are serious management deficiencies as reflected by the resignation and suspension of senior staff.

In this regard, I, Professor Kader Asmal, MP, have decided to appoint an Independent Assessor as I am satisfied that the circumstances contemplated in section 45(b), (c), and (d) are met.

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The final straw for Govender was when the council last week rejected a PriceWaterhouse-Coopers (PWC) report it had commissioned to investigate management and governance concerns at the institution.

"Some of the things going on at UDW are unbelievable," he said. "I regard the council as dysfunctional... The council should be dissolved."

Some of the things going on at UDW are unbelievable... The council should be dissolved

Of the PWC investigation and report, which the university rejected as being "partial, limited and incomplete", Govender said the fact that it wasn't to the liking of the very people who asked for it was a "severe indictment".

Last month, Asmal appointed an independent assessor to investigate UDW management. But the university challenged the decision, urging the minister to hold off until the PWC investigation was complete.

Govender, who believes the report is proof of "clear wrongdoing and irregularities", says "a proper council with principles would not have allowed management to do what it has been able to do".

Another vocal council member, Roy Stuart, who has served the body for the past 25 year says he was threatened by fellow council member.

Stuart, who feels the coun is "not legitimate", says t colleague also asked "whethe have good security at r home".

Says UDW councillor I Mkhize: "If the minister do n't take appropriate steps don't see myself continui here."

UDW council chairwom Dr Namane Magau, had responded to several *D News* messages by late night.

□ Full story: Page 6

Annexure V

Appendix V

Tel No. (031) 301 1749
Fax No. (031) 307 6532 / 304 9922

E-mail: olsen@law.co.za

Thirteenth Floor
6 Durban Club Place
Durban

19th August 2003

P.J. OLSEN SC

The Chair, Council of the University of Durban Westville
Dr N. Magau

Per Facsimile: 011 7142071

Dear Dr Magau

RE: PROFESSOR P. S. PILLAY AND PROFESSOR ANAND SINGH

Yesterday I received a telephone call from the Vice Chancellor to advise me that he had faxed to me copies of the letter of 15th August 2003 addressed to Professor Pillay and the notice of disciplinary enquiry addressed to Professor Singh, so that it might not be said that members of the council were being left out of the loop. I must say that his decision in that regard was a laudable one, and I hope that all council members were briefed in a like manner. Dr Cooper and I had a long telephone conversation which ranged far beyond the matter he telephoned me about. After that call I read the documents, and they have caused me no little concern.

PROFESSOR ANAND SINGH

(a) Charges 3 to 7 (inclusive) of the charges of which Professor Singh was given notice have to do with his conduct within Senate and within the Council.

(b) In my view the control of business within the Senate and within Council is a matter for the Senate and Council respectively. Those two bodies should be left to discipline their own as regards what goes on in meetings.

(c) I have no idea of what the employee disciplinary rules and procedures say regarding the employment of such procedures in respect of proceedings of the Senate or Council. However I would be most surprised to learn that such a disciplinary body has jurisdiction in such matters.

(d) I appreciate that the University as a whole has an interest in seeing that its employees (and especially senior employees) do not conduct themselves in an unseemly fashion in connection with University affairs. But the Council is Professor Singh's employer. If there is any jurisdiction given to a disciplinary body convened under the rules, then it seems to me to be contemptuous of Council (in the legal sense) for proceedings before such a body to be instituted without first consulting Council, when the charges relate to the conduct of affairs before Council. I do not regard the charges relating to the Senate in any different light.

(e) Insofar as charges 1 and 2 are concerned, I know very little about the background to them. They may or may not warrant further investigation. A reading of them suggests that they cannot possibly support a decision to suspend an employee as senior as Professor Singh, and to prohibit him from entering the University otherwise than in connection with the disciplinary proceedings.

(f) I do not have access to the provisions of the Disciplinary Code which are referred to as authorising the suspension in question. If suspension is discretionary, then that discretion has in my humble opinion been wrongly exercised. If, on the other hand, for some technical reason it is compulsory,

then, bearing in mind Professor Singh's membership of the Council, it is simply untenable that the charges were laid without first consulting the Council.

(g) I am compelled to ask you to intervene if you have the authority to do so. If you do not have that power I am compelled to ask you to make urgent representations to Dr. Cooper to take action. In either case it is my respectful view that the following steps should be taken.

(i) The suspension of Professor Singh should be lifted immediately.

(ii) Unless Professor Singh himself insists that they should go on, the disciplinary proceedings should be adjourned until after this weekend's Council meeting.

(iii) Whatever else happens, steps should be taken to ensure that there is no obstacle to Professor Singh's attendance at the Council meeting this coming Friday and Saturday. It is hardly without significance that Professor Singh is a principal signatory to the notice of governance issues to be discussed at the meeting.

PROFESSOR P. S. PILLAY

(a) As Dr. Cooper pointed out to me in our telephone conversation yesterday, Professor P. S. Pillay is the person who presented the 2002 Financial Statements to the last meeting of Council. (You will appreciate that I am still struggling to put names to faces and positions.) I had the distinct impression that Professor Pillay had done a good job and I saw no sign of mistrust in

Professor Pillay emanating from Council members far more aware of university affairs than I am.

(b) The allegation that Professor Pillay is guilty of "poor work performance" accordingly comes as a matter of some surprise.

(c) Insofar as the remaining allegations are concerned they are very serious indeed. Whilst "misconduct" can mean anything, the suggestion that Professor Pillay is guilty of "fraud committed against the University and breach of (his) fiduciary duty to act in the interests of the University" comes as a shock to me.

(d) Again, Professor Pillay has been suspended. I must assume that very startling and fresh information concerning Professor Pillay came to hand between 4th August 2003 and 15th August 2003. After all, if that was not the case, and the University executive was conversant with some of this information before the meeting of 4th August, one would assume that it would not have been impliedly represented to the Council that we could rely upon Professor Pillay's presentation of the financial statements, and the answers he gave to the questions posed by various members of Council.

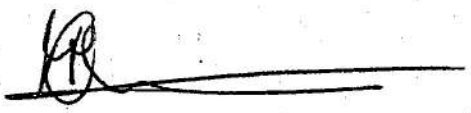
(e) The position as regards Professor Pillay must obviously be clarified as a matter of urgency. I would imagine that he is and has been a central player in merger discussions on the crucial topic of finance. To lose a man in that position at this crucial time looks disastrous.

(f) I must ask you to ensure that the Council, in its capacity as employer of Professor Pillay, receives a full and proper report of the circumstances which gave rise to the letter of 15th August 2003, and of the standing of the matter as at 22nd August 2003. It seems, with respect, that Professor Pillay's

position is so crucial that the decision as to whether he should be suspended should have been left to Council. However, if the allegations brought to Dr. Cooper's attention were so serious as to warrant immediate action, then the question of whether or not the suspension should be maintained should be considered by Council in the light of progress made with investigations by Friday.

I am forwarding a copy of this letter to Dr. Cooper. Bearing in mind the urgency of this matter, I believe that I would be disrespectful of him if I did not allow him an opportunity to consider the representations I am making to you.

Yours sincerely



P. J. OLSEN SC

Vice Chancellor
UNIVERSITY OF DURBAN-WESTVILLE
PRIVATE BAG X54001
DURBAN 4000
SOUTH AFRICA
TEL (031) 204-5000
FAX: (031) 263-2192
E-mail: vc@pbuke.udw.ac.za

19 August 2003

Adv P. J. Olsen
13th Floor
6 Durban Club Place
Durban
4001

FACSIMILE TRANSMISSION: 031-307 6532

Dear Adv Olsen

Your facsimile of 19 August 2003 addressed to the Chairperson of Council, which you copied to me refers:

1. Prof A. Singh was suspended and charges proffered against him, in terms of the Employee Rules, because his conduct interfered with the management and administration of the University. The internal disciplinary enquiry is scheduled for Friday at 08:30 in terms of the LRA and precisely to enable Prof Singh to respond to the charges before the Council meeting.
2. Numerous charges (largely brought to my attention last week) have been brought against Prof P. S. Pillay, which Council will be appraised of at its next meeting.

As you are aware, I, as the CEO of the institution, am responsible for the efficient management and administration of the institution and have acted in the best interests of the institution and in accordance with powers vested in me.

Yours sincerely

S. Cooper

Dr S Cooper
Vice-Chancellor

cc. Chairperson of Council: Dr N. Magau

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