

11 OCTOBER 2023

**INDEPENDENT INVESTIGATION
INTO UCT GOVERNANCE
FINAL REPORT**

JUDGE LEX MPATI (CHAIRPERSON)

JUDGE AZHAR CACHALIA

DR BERNADETTE JOHNSON

DR PATRICIA HANEKOM

TABLE OF CONTENTS

ABBREVIATIONS.....	5
INTRODUCTION	7
THE MEMBERS OF THE PANEL AND EVIDENCE LEADERS	9
THE TERMS OF REFERENCE	9
THE REVISED TERMS OF REFERENCE	10
PROCEDURES RULES AND GUIDELINES	13
CONFIDENTIALITY	14
THE INVESTIGATION	14
THE BURDEN OR STANDARD OF PROOF	15
THE RECORD	16
HOW UCT IS GOVERNED	16
THE VICE-CHANCELLOR AND DEPUTY VICE-CHANCELLORS	17
THE COUNCIL.....	18
COUNCIL REMUNERATION COMMITTEE	20
CONFLICTS OF INTEREST	20
COUNCIL CODE OF CONDUCT	23
THE CONFLICT OF INTEREST POLICY	25
THE SENATE.....	27
INSTITUTIONAL FORUM	29
THE FIRST COUNCIL (1 JANUARY 2018 TO 30 JUNE 2020).	30
LANGE’S APPOINTMENT	34
PHAKENG’S APPOINTMENT AS VC.....	34
THE JUNE 2019 COUNCIL MEETING.....	43
THE OMAR, DAVIDS, ROUSSEAU REPORT.....	45

THE OMBUD REPORT 2018 TO 2019	52
THE OMBUD'S 2018-2019 REPORT	53
THE LEGAL OPINION	58
24 APRIL 2020 COUNCIL MEETING	59
EVALUATION OF THE PITYANA COUNCIL	67
THE NGONYAMA COUNCIL.....	69
THE NGONYAMA'S COUNCIL'S APPROACH TO THE OMBUD REPORT	71
THE BOARD OF PRACTICE	76
PROFESSOR LORETTA FERIS RESIGNS.....	78
DR RUSSEL ALLY RESIGNS.....	83
A/PROFESSOR LIS LANGE'S RESIGNATION AND SUBSEQUENT DEVELOPMENTS	86
THE MEETING ON 3 JANUARY 2022.....	88
THE NDA IS CONCLUDED	94
NGONYAMA'S PLAN UNRAVELS.....	96
THE SENATE MEETING: 22 MARCH 2022	97
THE COMMERCE FACULTY BOARD MEETING.....	99
SPECIAL COUNCIL MEETING OF 6 MAY 2022	100
SENATE MEETING 10 JUNE 2022	101
THE SENATE MEETING OF 30 SEPTEMBER 2022.	103
SPECIAL COUNCIL MEETING OF 6 OCTOBER 2022	106
MS GERDA KRUGER IS SUSPENDED	122
MR ROYSTON PILLAY RESIGNS.....	131
DR RENO MORAR RESIGNS.....	135
PROFESSOR LINDA RONNIE RESIGNS	138
MS MIRIAM HOOSAIN RESIGNS	143
MS JUDITH DU TOIT RESIGNS.....	147
PROFESSOR ELELWANI RAMUGONDO.....	151

<i>THE FINDINGS CORRELATED WITH THE REVISED TERMS OF REFERENCE.....</i>	<i>158</i>
PROFESSOR LORETTA FERIS	159
ASSOCIATE PROFESSOR LIS LANGE.....	160
DR RUSSEL ALLY	163
MS GERDA KRUGER.....	164
MR ROYSTON PILLAY	165
DR RENO MORAR	165
PROFESSOR LINDA RONNIE.....	166
MS MIRIAM HOOSAIN	166
MS JUDITH DU TOIT	167
<i>GOVERNANCE FAILURES</i>	<i>168</i>
THE PITYANA COUNCIL.....	170
THE NGONYAMA COUNCIL	171
<i>UNFAIRNESS, BREACHES OF LABOUR LAW, UCT STATUES, REGULATIONS AND POLICIES</i>	<i>172</i>
<i>RECOMMENDATIONS ON GOVERNANCE.....</i>	<i>174</i>
<i>REMEDIES FOR INDIVIDUALS WHO WERE WRONGED BY UCT</i>	<i>177</i>
<i>CONCLUSION</i>	<i>178</i>

ABBREVIATIONS

Ally	ED DAD, Dr Russel Ally
Arendse	Member of Council, Mr Norman Arendse
BOP	A consultancy company, Board of Practice
Budlender	Deputy Chairperson of Council until March 2020, Ms Debbie Budlender
CEO	Chief Executive Officer
Chirwa	Member of Council representing Senate, Professor Danwood Chirwa
CMD	Communication and Marketing Department
COO	Chief Operating Officer
DAD	Development and Alumni Department
De Vos	Constitutional Law Expert, Professor Pierre de Vos
DVC	Deputy-Vice Chancellor
ED	Executive Director
ETI	Executive Transformation Initiative
Exco	Management Executive Committee including the VC, DVCs, COO and Registrar
Feris	DVC Transformation and Student Affairs, Professor Loretta Feris
Hall	Acting DVC Transformation and Student Affairs, Professor Martin Hall
Harrison	DVC Research, Professor Sue Harrison
HEA	Higher Education Act 101 of 1997
Hoosain	ED Human Resources, Ms Miriam Hoosain
HR	Human Resources
IF	Institutional Forum
IS	UCT Institutional Statute
Jacobs	HR Services Officer, Ms Michelle Jacobs
Kruger	ED Communication, Ms Gerda Kruger
Lange	DVC Teaching and Learning, Adjunct Professor Lis Lange
LL	Leadership Lekgotla Meeting
Lushaba	Member of Council, Dr Lwazi Lushaba
Mapara	Head of the HR Department's Employee Relations Team, Advocate Barbara Mapara
Mohamed	Deputy Chairperson of Council from July 2020 to March 2021, Ms Nazeema Mohamed
Mokgabudi	Member of Council, Ms Tshidi Mokgabudi
Morar	COO, Dr Reno Morar
Moult	Professor Kelly Moult, President of the Academic Union 2018 – 2022

Moultrie	Member of Council, Professor Tom Moultrie
Mtyingizana	Director of the International Academic Programmes Office, Dr Beata Mtyingizana
MTT	Ministerial Task Team Ministerial Task Team on the recruitment, progression and retention of black academics
NDA	Non-disclosure agreement
Ngonyama	Chairperson of Council from July 2020 to May 2023, Ms Babalwa Ngonyama
OVC	Office of the VC
PASS	Professional, Administrative Support and Service Staff
Phakeng	VC from July 2018 to February 2023, Professor Mamokgethi Phakeng
Pityana	Chairperson of Council until July 2020, Mr Siphon Pityana
Price	VC until July 2018, Dr Max Price
Prozesky	Dr V Prozesky, leader of the BOP Consultancy Team
Ramugondo	DVC Transformation, Student Affairs and Social Responsiveness, Professor Elelwani Ramugondo
RemCom	Council Remuneration Committee
Rousseau	Member of Council, Mr Jacques Rousseau
RToR	Revised terms of reference
SLG	Senior Leadership Group
Stansfield	Legal service provider to UCT, Mr Gavin Stansfield
Tainton	HR Services Officer, Ms Margie Tainton
The Ombud	The UCT Independent Ombud, MsZetu Makamandela-Mguqulwa
The Policy	The Conflict of Interest Policy
ToR	Terms of Reference
UARC	UCT Audit and Risk Committee
UCT	University of Cape Town
VC	Vice-Chancellor
VCDESK	
Williamson	Member of Senate, Professor Williamson
Zinn	Deputy Chairperson of Council from March 2020 to July 2020, Professor Shirley Zinn

Introduction

- [1] Associate Professor Lis Lange (“Lange”) was appointed Deputy-Vice Chancellor (“DVC”): Teaching and Learning on 1 February 2018. She joined an executive team led by Dr Max Price (“Price”), the then Vice-Chancellor (“VC”). Five months later Professor Mamokgethi Phakeng was appointed VC, when Price’s second term ended. She commenced her term as VC on 1 July 2018.
- [2] VC’s and DVC’s serve renewable terms of five years. Lange’s first term would have ended on 31 January 2023, but was abruptly terminated on 28 April 2022, nine months earlier.
- [3] On 22 March 2022, Senate strongly endorsed a recommendation by the Chairperson of Council, Ms Babalwa Ngonyama (“Ngonyama”) for Phakeng’s term as VC to be renewed. Her motivation to Senate did not disclose Lange’s impending departure, a fact that became an important focus of this inquiry.
- [4] Numerous witnesses testified that Lange enjoyed the respect of both academic and professional staff. The announcement of her sudden departure after the Senate meeting thus raised questions, in Council, the Senate and the broader University of Cape Town (“UCT”) community. Instead of providing factual answers to the questions, Ngonyama and Phakeng – the most senior office bearer of the UCT Council and the Chief Executive Officer (“CEO”) of UCT – took refuge in the non-disclosure clauses of Lange’s termination agreement, maintaining that Lange had terminated her contract voluntarily for “personal and confidential” reasons.
- [5] Several witnesses testified that this explanation was inconsistent with what Lange had told them: that she wished to serve a second term. It was also perplexing that she had signed a non-disclosure agreement (“NDA”), which in their view suggested her termination was non-consensual. The unease at UCT increased because another DVC: Professor Loretta Feris (“Feris”) had left a year earlier, and Dr Russel Ally (“Ally”), an advisor of both Price and Phakeng, soon after her, also having concluded NDA’s. In both cases it was believed that they had terminated their contracts after having had disputes with the VC.

There were also unconfirmed, but persistent, reports of unhappiness with Phakeng's leadership by members of her executive team and others in the senior leadership of UCT. It further emerged, after the 22 March 2022 Senate meeting, that other members of the executive team were also contemplating leaving.

- [6] These reports had a debilitating effect on UCT, divided Senate and Council, and were widely reported in the media. That UCT was facing an unprecedented leadership and governance crises was apparent.
- [7] After six months, on 15 October 2022, Council resolved to appoint an independent panel, headed by a retired judge, to investigate these matters. On 26 October 2022, Senate also voted to support an independent inquiry. On 3 November 2022, Council approved the establishment a panel consisting of five members.
- [8] Before the Panel commenced its investigation, Council concluded an agreement with Phakeng, on 21 February 2023, terminating her employment as VC on 3 March 2023. The agreement provided that she would remain at UCT as professor in the School of Education and retire a year later on 30 March 2024. UCT subsequently announced her retirement as a professor in the school with effect from 1 April 2023, thus severing its relationship with her.
- [9] On 17 May 2023, the Panel delivered an Interim Report to Council recommending that Council removes Ngonyama as Chair. This followed her refusal to submit a statement to the Panel dealing with the allegations against her and to appear at a hearing. The Report is attached as Annexure "A". She resigned from Council five days later, on 22 May 2023. Council accepted her resignation on 29 May 2023.
- [10] The departure, first of Phakeng and then of Ngonyama from UCT, had no bearing on the Panel's investigation. Their roles, and those of others, in the resignation of Lange and other executives, the possible governance failures that resulted therefrom and UCT's responsibility for any wrongs done to its employees still had to be investigated. UCT not only wanted answers to these questions, but mandated the Panel to investigate whether the previous

Council's actions had also contributed to any governance failures. The previous Council's term ran from 1 July 2016 to 30 June 2020. The scope of the events covered in the Panel's investigation begins on 1 January 2018.

The Members of the Panel and Evidence Leaders

- [11] Council initially resolved, on 15 October 2022, to appoint a panel of five independent members. Only four of the proposed five nominees were available and were appointed in terms of an amended resolution by Council on 31 January. Justice Lex Mpati, was appointed to chair the Panel. The other members were Justice Azhar Cachalia, Dr Patricia Hanekom and Dr Bernadette Johnson.
- [12] The resolution authorised the Registrar to appoint a firm of attorneys to provide secretarial and logistical support to the Panel and to brief a team of evidence leaders. Ashley Meyer of Herold Gie Attorneys was appointed to perform this function. He was ably assisted by two candidate attorneys, Bronwyn Dearden and Emma Meyer. The Evidence Leaders, who are members of the Cape Bar, were Pieter Botha SC, Veronique Barthus and Ntwanano Simmons. We thank them for their support and diligence.

The Terms of Reference

- [13] The Terms of Reference (ToR) adopted by Council on 3 November 2022 are attached as Annexure "B". In summary the Panel was required to investigate:
- (a) whether the VC and the Chairperson of Council (CoC) had misled, Senate, Council and Faculty Boards regarding Lange's availability for a second term and the reasons she did not pursue it;*
 - (b) all matters related to executive relationships, including the number of and the reasons for resignations within and beyond the executive commencing 1 January 2018.*
- [14] The emphasis of the investigation in (a) was on Phakeng's and Ngonyama's role in Lange's resignation. The focus in (b) was of a wider import, requiring "all matters" concerning executive relationships, including the reasons and resignations within and beyond the executive to be investigated.

[15] The Panel was required to recommend actions to be taken generally and against individuals following its findings and conclusions. It was also asked to compile a list of members of the previous and current Council, under whose watch these resignations occurred. That list was obtained from the Registrar and is attached as Annexure C.

The Revised Terms of Reference

[16] As a result of the agreement on 21 February 2023 contemplating Phakeng's departure Council revised the Panel's mandate. On 11 March 2023 it adopted revised terms of reference ("the RToR"). The preamble of the RToR stated that it was now required to "*...investigate issues of governance that have affected the University without specifically investigating the conduct of the former [VC].*". (Emphasis Added).

[17] Clause 3 of the RToR sets out that "[t]he purpose of the inquiry shall be primarily forward looking although, based on its findings, the Panel is authorised to recommend redress where warranted. The Panel is thus authorised to make recommendations that could help Council and the University to prevent and better address any of the failures of governance the Panel finds."

[18] Clause 5 of the RToR stated that the VC was no longer required to appear before the Panel or submit evidence to it. Findings against her regarding any disciplinary breaches by her were thus excluded from the scope of the inquiry. To her credit, and even though she was not under any legal obligation to testify, she testified for two days in response to an invitation from the Panel. We consider her evidence later.

[19] Although the RToR no longer required a specific focus on the VC's conduct, clause 4 broadened the scope of the inquiry to cover:

"a. The circumstances surrounding the resignation or retirement of members of the executive including DVC's, deans, directors and other employees linked to the senior leadership, with the specific purpose of finding out whether executive relations and the failures of governance within the Council, its offices and structures contributed to this;

b. In relation to 4(a) above, the Panel is empowered to advise whether any unfairness, breaches of labour law or UCT statutes, regulations and policies took place, whether any remedy is possible and practicable, and whether there are policy gaps that need rectifying; and

c. The role of Council in handling the Ombud Report and subsequent reports, and whether there were any failures of governance in this regard that still need to be addressed.”.

[20] It is important to draw the reader’s attention to the language used in clause 4a – “*circumstances surrounding*” – which is suggestive of a broad inquiry extending beyond the immediate causes of resignations and retirements. Other circumstances present when these events occurred, and subsequent thereto, were thus also considered relevant to this inquiry.

[21] Clause 7 of the RToR is also important. It provides as follows:

“...[T]he Panel shall not disregard any relevant evidence submitted by any person on the conduct of the former VC which is imputable to the University, provided that the Panel shall treat such evidence with appropriate caution to avoid undue prejudice to the University. In order to avoid breaching the Memorandum of Agreement referred to in the preamble, the Panel shall not make specific findings concerning the personal responsibility of the former VC for any wrong possibly constituting misconduct. The Panel may however make conclusions or findings pertaining to her acts or omissions taken and made in the ordinary course of employment and therefore attributable to the University.”.

[22] It is apparent that what UCT had in mind by clause 7 was the investigation of any conduct of VC that may be legally imputable to UCT; but not conduct for which she may only, without more, be personally liable to any sanction by UCT. The VC is the CEO of UCT and is responsible for its management and administration. Viewed either from the viewpoint of the vicarious liability of employers for the acts and omissions of its employees, or from the perspective of the direct liability of any employer for the acts and omissions of its CEO, who

is its controlling and directing mind, UCT is liable for the wrongs committed by its employees and CEO.¹ Clause 8 of the RToR is thus emphatic:

“In admitting and considering evidence touching on the conduct of the VC...the Panel shall be directed by the need to ensure that UCT accounts and takes full responsibility for all omissions and actions attributable to it that may have had an adverse impact on the rights and interests of its employees and other members of the university community.”

- [23] In this regard it is important to note that the phrase “*rights and interests*” goes further than referring to conduct which is only legally imputable to UCT. The word “*interests*” extends the Panel’s mandate to ensure that UCT assumes full responsibility for the actions of its senior officials even if they do not give rise to legally cognisable claims, but adversely impacted on the interests of its employees and UCT.
- [24] The Panel thus concluded that while the RToR precluded the VC from being compelled to testify following the termination of her contract, she nevertheless remained a material witness. No other member of UCT who had knowledge of what happened, including and especially Ngonyama, was therefore exempt from having to testify.
- [25] Finally, clause 11 of the RToR states that the ToR adopted on 3 November 2022 continues to apply “*to the extent that they do not conflict with any term of this resolution*”. The RToR thus did not repeal or replace the ToR. It took precedence over the ToR only in the event of inconsistency. In construing its mandate, therefore, the Panel read the ToR and RtoR together.
- [26] To facilitate the work of the Panel, Council appointed a sub-committee to liaise with it. It comprised three members: Ms Nazeema Mohamed (“Mohamed”), Mr Jacques Rousseau (“Rousseau”), and Mr Ezra Davids. On 17 March 2023 the Panel met with the sub-committee and presented a legal opinion regarding its revised mandate, without demur. Mr Davids was not present. The Panel was advised at a subsequent meeting with the sub-committee that the opinion

¹ Cf. *First National Bank of SA Ltd v Rosenblum and Another* 2001 (4) SA 189 at para 18.

formed part of its report to Council, which Council accepted. The opinion was dated 15 March 2023 and is Attached as Annexure D.

Procedures Rules and Guidelines

[27] An important addition to the RToR was the instruction, in clause 2, for the inquiry to be conducted in an inquisitorial, rather than adversarial manner. This required the Panel, assisted by evidence leaders, to adopt an active, instead of a passive role, associated with adjudicative bodies in identifying and probing witnesses to establish facts. The Panel is not an adjudicative body, and its inquiry is not governed by the usual rules of procedure.

[28] Importantly, it decides nothing. But this does not relieve it of the duty to act fairly. As Lord Denning in a famous English case, *Pergamon Press*², frequently quoted in our law³, observed in describing the impact of what investigative bodies, such as the Panel, do:

“[This] should not lead us to minimise the significance of their task. They have to make a report which may have wide repercussions. They may, if they think fit, make findings of fact which are very damaging to those whom they name. They may accuse some, they may condemn others; they may ruin reputations or careers.”

[29] The Panel was, therefore, mindful of its duty to act fairly. In its most basic form, this required the right of persons against whom adverse allegations were made, to be heard. This was provided for in the rules, which the Panel adopted. Rule 1 defined a person against whom an adverse allegation had been made as an *“implicated person.”* Rule 9.11 provided explicitly for the right of an implicated person to be heard. Rule 7 provided for the circumstances under which persons appearing before the Panel could be legally represented, question, examine witnesses, or make submissions to it. Rule 10 set out the further rights to which implicated persons were entitled. In each case, implicated persons were informed of these rights before being invited to submit a written statement and to testify at a hearing. The Rules are attached as Annexure E.

² *Re Pergamon Press Ltd* [1970] 3 All ER 535 (CA).

³ Cora Hoexter and Glenn Penfold *Administrative Law in South Africa* 3ed at 319

Confidentiality

- [30] Clause 4.1 of the ToR gave the Panel the authority to establish its own operating procedures. Clauses 4.4 and 4.10 required it to ensure that its work was done confidentially and that hearings were to be conducted *in camera*. Their purpose was to reduce the fear that witnesses would be deterred from testifying and to protect them from adverse repercussions. Rule 10.3 thus prohibited the disclosure of the identities of witnesses, or the contents of statements other than to a legal advisor for the purpose of obtaining legal advice. Rule 9.4 also provided for witnesses to testify anonymously.
- [31] The Panel ensured that the integrity of the process was safeguarded by strictly adhering to these requirements. There were a number of witnesses who stated that they did not require this protection. Their names are disclosed in this Report. There were other witnesses who, after having testified confidentially, subsequently confirmed that they had no objection to their identities being disclosed. A vexed problem was in the case of some witnesses where the nature of the evidence was such that it would be apparent who the witness was. The Panel ensured that before their testimony was referred to in the report, they authorised it and the loss of confidentiality was no more than strictly required.
- [32] Where there was a danger that referring to the factual detail may compromise a witness's confidentiality the Panel endeavoured to avoid doing so. It follows too that where a confidential witness's uncorroborated evidence was denied by an implicated party, no finding could be made. After testifying most witnesses felt comfortable with their names being mentioned, more so after the fear of reprisal had receded with the departure of the VC and the Chairperson of Council (Ngonyama). This made drafting the Report easier as most witnesses are mentioned by name.

The Investigation

- [33] Following the announcement of the investigation several campus announcements were made encouraging members of UCT to cooperate with the inquiry, emphasising the confidentiality of the process and warning that action would be taken against anyone who interfered with witnesses.

- [34] Witnesses were encouraged to contact Herold Gie Attorneys, and others were approached directly by the legal team. In a few cases, Panel members assisted in this process. In every case witnesses were provided with the ToR, RToR and the rules.
- [35] Once the witness had responded to the invitation, the Evidence Leaders conducted on-line interviews explaining what was expected of them. This entailed providing written statements in response to questions. These written statements were placed before the Panel and a determination made as to whether the witness would be required to testify in person.
- [36] Witnesses against whom adverse allegations were made, were invited specifically to provide statements. They were provided with a summary of the allegations to which they were required to respond. Where they appeared reluctant to do so they were put on terms.
- [37] In only one case where serious allegations had been made – Ngonyama’s – did the witness not appear, and adverse findings were made against her in the Interim Report to Council on 18 May 2023. She has since instituted review proceedings against UCT and the Panel in the high court.
- [38] The procedure generally adopted with each witness was the following: they were taken through their statements by the Evidence Leaders and questioned. Panel members also questioned witnesses. Only in two cases, that of Ms Pheladi Gwangwa (“Gwangwa”) and Professor Ramugondo, were applications made to the Panel for their legal representatives to be present at the hearing. The Panel granted them.
- [39] Where a witness’s evidence needed further investigation, this was done and they were asked to respond further in writing after the hearing.

The Burden or Standard of Proof

- [40] The investigation was not governed by rules of evidence appropriate to court proceedings. Concepts applicable in legal proceedings such as the ‘burden of proof’ and the ‘standard of proof’ did not apply. However, as a general requirement of fairness, the Panel has treated the burden of establishing any proposition as resting on the person who asserted it. Findings of fact were

made on the basis that the applicable test was analogous to the balance of probabilities approach in civil proceedings. Where inferential reasoning was employed the approach adopted was that the inference drawn was the more plausible or likely from the established facts.

The Record

- [41] The Panel began its hearings on 3 April 2023. It received extensive written and oral evidence from members of the UCT community, including members of Council, of Senate and of the present Executive. The hearings were concluded on 8 August 2023, when the last witness testified.
- [42] The Evidence Leaders presented the oral evidence of 27 witnesses from whom written statements were obtained after they were interviewed by the Evidence Leaders. The transcription of the oral evidence of these witnesses consists of 3825 pages.
- [43] In addition, written statements from other witnesses, who were not required to testify at a hearing, were received and considered by the Panel. The witness statements with annexures consist of an additional 1671 pages of evidence. The Evidence Leaders also placed a further 478 pages of documentary evidence before the Panel for consideration.
- [44] The Panel is indebted to every witness who took the time to assist the inquiry. We extend a special word of gratitude to the Registrar, Mr Royston Pillay (“Pillay”), and his staff who provided much of the documentary evidence to the Panel.

How UCT is Governed

- [45] It is necessary for present purposes to consider the legislative framework governing universities. Chapter 4 of the Higher Education Act 101 of 1997 (“the HEA”) deals with the governance of universities. Section 26 requires them to include a council, senate, principal, vice-principal, students’ representative council, an institutional forum and other structures determined by the institutional statute.

- [46] Council is the highest decision-making body of UCT. It has a fiduciary duty to UCT and must act in its best interests. Council works in partnership with Senate, which is accountable to the Council for academic and research functions. Council is not involved in the day-to-day management of UCT as this is the responsibility of the VC and the management team.
- [47] Universities are also subject to the Constitution, which is the country's supreme law. Of relevance to this inquiry are its foundational values of human dignity, the achievement of equality and non-racialism. UCT has adopted policies consistent with these values. Members of UCT and Council are prohibited, inter alia, from behaviour that includes hate speech, harassment, threats, intimidation, personal insults and racial intolerance.
- [48] UCT's institutional culture, as appears from its 'Statement of Values', includes 'inclusiveness' and 'acknowledgement of the value of diversity.' Its members must 'refrain from speech or conduct that humiliates people' and an injunction to 'advance the principle of collegiality.'
- [49] As will become apparent from the evidence, prohibited conduct and behaviour inconsistent with these values became prevalent during the period under investigation.

The Vice-Chancellor and Deputy Vice-Chancellors

- [50] Section 30 of the HEA vests the responsibility for the management and administration of UCT in the principal, henceforth referred to as the VC. Section 7 of the Institutional Statute ("the IS") says that the VC is the CEO. The VC derives his or her authority by assignment or delegation from the Council and Senate. The VC is a member of both and Chairperson of Senate. The VC is appointed by Council after consultation with Senate and the Institutional Forum ("the IF") (Section 8). The Chairperson of Council plays a central role in this process and is the office bearer of Council to whom the VC is accountable.
- [51] Section 10 of the IS provides that Council may appoint up to four DVC's, also after consulting Senate and the IF. Section 11 says that Council determines their functions. By virtue of their office, they serve on each committee of the Senate. They are accountable to the VC for the exercise of their functions.

[52] The VC performs his or her management and administrative function with the assistance of DVC's, the Chief Operating Officer ("COO") and the Registrar. They are members of an Executive Committee ("Exco"). The inquiry spent considerable time investigating the reasons for the dysfunction of Exco, which contributed to the resignations of almost the entire Committee.

The Council

[53] Section 27 of the HEA says that the Council governs the institution, subject to the HEA and the IS. It, therefore, lies at the apex of UCT's governance structure, and consists of no more than 30 members, made up of:

(a) the principal;

(b) the vice-principal or vice-principals;

(c) not more than five persons appointed by the Minister;

(d) a member or members of the senate elected by the senate;

(e) an academic employee or academic employees of the public higher education institution, elected by such employees;

(f) a student or students of the public higher education institution, elected by the students' representative council;

(g) an employee or employees other than academic employees, elected by such employees of the public higher education institution; and

(h) such additional persons as may be determined by the institutional statute.

[54] Section 13(1) of the UCT IS deals with the composition of Council in further detail. It provides that the Council consists of –

(a) the vice-chancellor; (b) one deputy vice-chancellor as decided by Council;

(c) the chief operating officer; (d) three members of the senate elected by the senate; (e) one member of the academic staff elected by the academic staff; (f)

one member of the professional, administrative, support and service staff elected by the professional, administrative, support and service staff in the

payclasses up to payclass 6 (g) one member of the professional, administrative,

support and service staff elected by the professional, administrative, support

and service staff in the payclasses 7 to 13; (h) three students elected by the SRC, one of whom must be a postgraduate student; (i) five persons appointed by the Minister; (j) one person appointed by the Premier of the Western Cape; (k) one person appointed by the City Council of Cape Town; (l) four persons elected by the convocation; (m) two persons elected by donors; and (n) five persons appointed by the appointments committee of Council.

- [55] Section 17 of the IS deals with the office bearers of Council. In terms of s54 Council appoints the Registrar, who serves, in terms of s17(3) as secretary of Council. The Registrar also serves as secretary of the Senate and Convocation. The Registrar's role is crucial in advising Council of its functions and recording its decisions. Pillay, the current Registrar, was one of the members of Exco, who tendered his resignation. At the time of writing, he had not left UCT and was reconsidering his position following the departures of the VC and Ngonyama.
- [56] Section 12 of the IS sets out the functions of Council. For present purposes regard must be had to s12(4), which permits Council to "*delegate or assign*" certain powers and functions to its committees and structures of UCT. A committee exercising a delegated function may do so only to the extent that the delegation permits, and no further. If a committee acts outside its delegated authority, it does so unlawfully.
- [57] Council makes policy for UCT. This includes language and admissions policy. Importantly, any policy must comply with South Africa's Constitution, its laws, and the IS. Council has tailored its governance arrangements according to its own requirements.
- [58] Council appoints all staff of UCT, but in the case of academic staff, may only do so after consulting the Senate. In practice most admissions are made through committees, performing this function through delegated or assigned authority.
- [59] The IS requires Council to elect a Chairperson and Deputy Chairperson. It is important to understand that these office bearers perform no executive functions (management and administrative) in fulfilling their governance responsibility. During the tenure of the present Council, it was evident that the

Chairperson conflated her governance responsibility with the VC's management and academic leadership duties.

- [60] In recent years Council created an executive committee to deal with practical matters in between Council meetings: It comprises the Chair, Deputy Chair, Chairperson of the Finance Committee, Chairperson of the Audit Committee, the VC, Registrar and two internal members of Council.

Council Remuneration Committee

- [61] An example of a Committee that has delegated authority from Council, and features prominently in this inquiry, is the Council Remuneration Committee ("RemCom"). It determines the salaries, terms and conditions, and all payments, including severance payments of executive staff. It also advises Council on remuneration policy. The terms of reference prescribe its delegated authority.

- [62] RemCom comprises the Chairperson of Council, Deputy Chairperson of Council, Chairperson of the Finance Committee, Chairperson of the Human Resources Committee and the VC. It is serviced by the Executive Director ("ED") of Human Resources or his or her nominee.

Conflicts of interest

- [63] Conflicts of interest and recusals of members of Council are governed by Subsections 27(7), (7)(A), (7)(B), (7)(C), (7)(D), (7)(E) of the HEA, and the IS. Section 27(7)(b) of the HEA requires that a member of a council '*must participate in the deliberations of the council or the committee of the council, or exercise any delegated function in the best interests of the public higher education institution concerned*'.

- [64] Section 27(7)(e) provides that a member of Council:

- '(e) (i) *may not have a conflict of interest with the public higher education institution concerned;*
- (ii) *may not have a direct or indirect financial, personal, or other interest in any matter to be discussed at a meeting, or in regard to which he or she is to make a decision in terms of a delegated*

function, and which entails or may entail a conflict or possible conflict of interest with the public higher education institution concerned; and

(iii) *must, before the meeting of the council or the committee concerned and in writing, inform the chairperson of that meeting of the existence of a conflict or possible conflict of interest.'*

(underlining added)

[65] Sections 27 (7A) to (7E) deal with the practical implementation of conflicts of interest in Council – and provide as follows:

'(7A) Any person may, in writing, inform the chairperson of a meeting of the council or a committee of the council concerned, before that meeting, of a conflict or possible conflict of interest of a member of the council or of a committee of the council with the public higher education institution concerned of which such person may be aware.

(7B) A member referred to in sections (7) (e) and (7A) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.

(7C) In the event that any member of a committee of the council or any employee, with delegated functions in terms of section 68 (2), has a conflict or possible conflict of interest as contemplated in this section in respect of a matter to be considered, the committee or the employee concerned may not take part in any consideration or a decision on the matter but must refer the matter for decision by council, having noted the member's or the employee's interest in the matter.

(7D) A member of the council or a member of a committee of the council who contravenes subsection (7) (c), (d) or (e), (7A) or (7B), after Council has followed a due process, may be-

(a) suspended from attending a meeting; or

(b) disqualified as a member of the council or a member of a committee of the council.

(7E) The council must-

- (a) having regard to the provisions of subsections (7A) to (7D), (9) and section 34 and after consultation with the institutional forum, adopt a code of conduct to which all the members of the council, all the members of committees of the council and all other persons who exercise functions of the council in terms of delegated authority must subscribe in writing.*
- (b) determine rules and procedures in terms of section 32 for an annual declaration-*
 - (i) by each member of the council, each member of a council committee and each person who exercises functions of the council in terms of delegated authority;*
 - (ii) of his or her financial interests and fiduciary roles, the latter to include but not be limited to offices, directorships of companies, memberships of close corporations and trusteeships held; and*
 - (iii) of the financial interests and fiduciary roles of the members of his or her immediate family.'*

[66] Section 21 of the IS provides as follows:

'21. Financial and other interests of council members

- (1) Any member of the council or a committee of the council or a person with delegated functions in terms of subparagraph 12(4) who has a direct or indirect financial or personal interest in any matter to be discussed at a meeting must, before or during such meeting, declare such interest, and comply with such other rules and policies as the council may adopt.*
- (2) After such declaration such member of the council or a committee of the council must excuse himself or herself from the meeting and any subsequent meeting at which the matter is to be discussed, and is not entitled to receive papers relating to the matter.'*

Council Code of Conduct

[67] Sections 16 (1)A, (1)B and (1)C of the IS are important. They require that:

‘(1A) Members of council must participate in the deliberations of the council in the best interests of the University.

(1B) Failure to act in the best interests of the University or behaviour that brings the University into disrepute may result in the removal from office of any member of council.

(1C) The removal from office of a council member will be regulated by the procedures specified in council’s code of conduct contemplated in section 27(7E)(a) of the Act.’

[68] The Council has in terms of s 27(7E)(a) of the HEA, after consultation with the IF, adopted a Code of Conduct to which all members of the Council must subscribe annually. A copy of the Code of Conduct is annexed hereto, marked Annexure “F”.

[69] The Code commits Council to “*Acting with the duty of care and skill that is owed to UCT....*”. Significantly, Council members undertake collectively and individually to:

- *act always in the best interests of UCT as a whole, and accept that this obligation precedes any duty a member may owe to the person or institution that elected or appointed him or her to the Council in all Council matters;*
- *act in good faith, honestly, truthfully and for proper purpose;*
- *exercise appropriate care and diligence in decision making;*
- *be diligent in performing Council responsibilities;*
- *not improperly use their position as Council members to gain an advantage for themselves or someone else;*
- *avoid conflicts of interests and comply with Council’s policy on the disclosure of interests and recusal;*

- *maintain the confidentiality of Council deliberations, and of all proprietary, strategic and sensitive or valuable information of UCT entrusted to them, except when disclosure is authorised or legally mandated; and*
- *preserve the dignity and respect of Council and respect and abide by its decisions.*

(underlining added)

[70] The Code also includes detailed requirements relating to statements made by Council members and use of social media. Although the section of the Code is intended to assist Council members to make informed and appropriate decisions regarding the use of social media platforms such as blogs, Wiki, social networking websites, podcasts, forums, message boards or comments on web articles such as Twitter, Facebook and all internet usage, it also mentions that '*The absence of explicit reference to specific social media does not limit the extent of the application of this code*'. It provides in relevant part:

- *Council acknowledges that social media is a powerful communication tool that has significant impact on institutional and professional reputations. Given that it may blur the line between personal and institutional voice, Council deems it necessary and appropriate to provide a guideline on how best to enhance and protect institutional and personal reputation when participating on social media platforms.*
- *Council trusts and reasonably expects Council members to exercise personal responsibility whenever they use social media platforms, which includes not violating the provisions of this Code or the trust of those with whom they are engaging.*
- *Council members are responsible for ensuring that their online activities do not interfere with the reputation of UCT or their ability to fulfil their obligations to Council*
- *Council members should be respectful of every individual's right to express their opinions, whether those opinions are complimentary or critical of Council and UCT.*

- *Council members are encouraged to represent the core values of Council whenever they make social media disclosures about Council- and UCT related topics.*
- *Council members should strive to add value to online conversations by advancing the dialogue in a constructive, meaningful way.*
- *Hate speech, harassment, threats, intimidation, ethnic slurs, personal insults, obscenity, sexist, racial or religious intolerance and any other form of behaviour that is prohibited in the UCT workplace is also prohibited on social media platforms. (Emphasis Added)*
- *Council members who choose to make social media comments and disclosures about topics relevant to Council are reminded that their comments and disclosures are neither private nor temporary. Social media disclosures live online indefinitely, and members should be aware that they are visible to a broad audience and are susceptible to being read out of context.*

The Conflict of Interest Policy

[71] Related to the Code is the Conflict of Interest Policy (“the Policy”). The Policy explains its rationale and purpose as follows:

‘This policy and these procedures are necessary because they promote good governance and objectivity. They are also necessary because the Higher Education Act and UCT’s Institutional Statute require them, and because the public (including research funding agencies) have a legitimate expectation that UCT will both conduct and be seen to conduct its affairs (including all research) with integrity and objectivity. All members of the Council, all members of committees, all other UCT staff members, including academic researchers and in particular members of management, are elected and appointed to serve the interests of UCT. This makes them trustees for the benefit of UCT and the public UCT serves. It results in an obligation to fulfil responsibilities in a manner consistent with this situation. All work and decisions of members of Council, staff, managers and office bearers, is to be made solely on the basis of a desire to promote the best interests of UCT.

...The University recognises that Council members generally will be and staff may be involved in the affairs of other institutions and organisations, or have their own professional or business careers. This can be beneficial to UCT. Provision must be made, however, to deal with the potential, or perceived, conflicts of interest that may arise. The significance and implications of such conflicts, potential or real, vary and include nepotism. At worst, there could be substantial detrimental effects for UCT, including litigation, loss of sponsorship, embarrassment and public criticism. On the other hand, circumstances surrounding potential conflict may be so inconsequential, or present such a small risk, that, on striking a balance, the implications of such conflict are wholly outweighed by the potential benefits to be derived.'

[72] The Policy is applicable to all members of Council. It defines 'conflict of interest' and 'fiduciary' as follows:

'Conflict of interest: A conflict between the private interests (financial, fiduciary, personal or other) of an individual and the official responsibilities of the individual in a position of trust.'

'Fiduciary: relating to or involving a confidence or trust.'

1. 'Recuse' is defined as follows:

'To disqualify oneself as a judge in a particular case; to remove oneself from participation to avoid conflict of interest.'

2. Paragraphs 1.2 and 1.3 provide as follows:

'1.2. A Council or a Council committee member must withdraw from any meeting where he or she has a direct or indirect financial, personal or other interest in any matter to be discussed at a meeting.'

'1.3. In addition, a Council and committee member must, in writing, inform the Chairperson of a meeting, before the meeting, of a conflict or possible conflict of interest contained in the agenda for that meeting and if confirmed must recuse himself or herself from the meeting for the item.'

3. Section 4 provides as follows:

'In any situation where a potential conflict of interest may arise, the person involved must withdraw from processes and decisions.'

4. Section 4.1 states as follows:

'4.1. A member of Council a Committee or of staff with a conflict of interest is obliged to recuse himself or herself (immediately withdraw) from the situation which is linked to the conflict, or during the discussion of the matter and the voting thereon.'

[73] It is apparent from the provisions of the HEA, the IS, the Code and the Policy that:

- (i) a Council member or a Council committee member must withdraw from any meeting where he or she has a direct or indirect financial, personal or other interest in any matter to be discussed at a meeting.
- (ii) This includes both an actual conflict of interest and a 'possible' or 'potential' conflict of interest.
- (iii) The member in question must, in writing, inform the Chairperson of such a meeting, before the meeting, of a conflict or possible conflict of interest contained in the agenda for that meeting and is obliged to recuse himself or herself from the meeting for the item, for the discussion and the voting.
- (iv) Any other person, may, in writing inform the Chairperson of a meeting of the Council of such a conflict or possible conflict of interest before a meeting. In such circumstances, the member is obliged to recuse himself or herself from the discussion of the matter and the voting.

The Senate

[74] Section 28 of the HEA makes the Senate accountable to Council for UCT's academic and research functions. It provides that the composition of the Senate must consist of:

(a) the principal;

(b) the vice-principal or vice-principals;

(c) academic employees of the public higher education institution;

- (d) employees of the public higher education institution other than academic employees;*
- (e) members of the council;*
- (f) members of the students' representative council; and*
- (g) such additional persons as may be determined by the institutional statute.*

[75] The composition of the UCT Senate is dealt with in s 23 of the IS. In terms of s 23(1) the Senate consists of:

- (a) the vice-chancellor;*
- (b) the deputy vice-chancellors;*
- (c) the deans and acting deans, and the deputy deans and acting deans;*
- (d) the heads and acting heads of academic departments;*
- (e) the professors;*
- (f) twelve members of the non-professorial academic staff elected by the academic staff;*
- (g) the ED of Libraries, the ED of the Department of Student Affairs and additional members as determined by the institutional rules;*
- (h) six members of the professional, administrative, support and service staff elected by these staff;*
- (i) twelve students, six of whom elected by the SRC, at least two of whom must be postgraduate students, and at least one of whom must be a member of the SRC; the remaining six students are elected in terms of the institutional rules;*
- (j) two members of the council elected by the council;*
- (k) one member from each of the academic departments and who are elected as determined by the institutional rules in such a way as to better reflect in the senate the diversity of the academic staff; and*

(l) *as assessor members without voting rights, the Chief Operating Officer, the Director of the Institutional Planning Department, and the Director of Student Admissions.*

[76] Section 22 (3) of the IS states that the Senate –

(a) *must carry out such other functions as the council assigns to it;*

(b) *must submit to the council such reports on its work as may be required by the council; and*

(c) *makes recommendations to the council on matters referred to it by the council and on any other matter affecting UCT as it considers necessary.*

(Emphasis added)

[77] Section 22 (3)(c) is an important check and balance on Council's governance of UCT. It was invoked by concerned members of Senate to impugn Ngonyama's explanation to Senate regarding Lange's departure and other resignations from Exco. This matter "*affected UCT*" because it impacted directly on its governance. This issue is explored later in the report in relation to the circumstances of Lange's departure.

[78] Although the Senate is accountable to Council, it is the Senate that is responsible for and the final authority on a range of core academic and research functions, as specified in s 22 of the IS. Thus, unlike corporate organisations, universities have a dual governance structure. As CEO of UCT, the VC is accountable to Council, and as Chairperson of the Senate, provides leadership to and is accountable to Senate. The VC is positioned at the fulcrum of the two spheres of university governance. The relationship between the Chairperson of Council and the VC, and a proper understanding of their roles and responsibilities, is therefore critical for the proper functioning of UCT.

Institutional Forum

[79] Section 31 of the HEA provides for an IF to advise council on matters concerning the university's governance. Sections 29 and 30 of the IS deals with the functions and composition of the IF. The IF was not the focus of this investigation.

The First Council (1 January 2018 to 30 June 2020).

- [80] This inquiry concerns a five-year period from January 2018 to December 2022, straddling two Councils. The first Council's Chairperson was Mr Siphon Pityana ("Pityana"). He was appointed in December 2015, and elected as Chairperson in July 2016. Price was then the VC, having been appointed in 2007. His term was renewed for a further five years in 2013.
- [81] The years 2015-2017 were tumultuous, due to the national student and worker protests at universities. It placed enormous pressure on the leadership of UCT. Among the demands was for better representation of senior black professional and academic staff. Ally was appointed to the senior executive team in 2013 and Feris, to the sensitive and difficult portfolio of DVC Transformation and Student Affairs in January 2017. Both black, they were important actors in this inquiry.
- [82] Price first invited Phakeng to apply for the transformation position in 2015, while she was employed at Unisa. She turned down the invitation because she wished to apply for the Research DVC post at UCT, when it became available. Phakeng rejected the transformation offer, because she considered it a "*black person's job*," implying that it was not a job for serious academics.
- [83] Phakeng later applied for and was appointed DVC: Research and Internationalisation in January 2017. Price was on the selection committee, as was Ms Debbie Budlender ("Budlender"), the Deputy Chairperson of Council. On objective criteria, there was no question that Phakeng qualified for the position, having been a Vice-Principal for Research and Innovation at Unisa. There were, however, unconfirmed adverse reports regarding her performance and relationships with colleagues. Price was unable to elicit specific evidence confirming these criticisms from her referees. There were, therefore, no grounds not to appoint her. The fact that she is a "*black female candidate*", as Price put it, also redounded to her benefit.
- [84] Budlender initially felt excited about recommending Phakeng for appointment, because, as she testified, "*she brought something new and different*". Senate voted overwhelmingly to confirm the appointment.

[85] Soon into Phakeng's term as DVC, problems arose with her leadership. These included her poor relations with other DVC's and hostility to any criticism or comment from her peers, no matter how well meant. She appeared to believe that the criticism was aimed at undermining and victimising her because she was a "*small black woman*," as she frequently described herself. She often mentioned that she was the only black woman at Bremner (the UCT's administrative headquarters), which alienated her colleagues.

[86] She also appeared to encourage racial division. In one instance, Professor Danie Visser, Phakeng's predecessor as DVC, introduced Phakeng to Ms Zetu Makamandela-Mguqulwa, ("the Ombud") at a meeting. There was a minor difference of opinion between Visser and the Ombud over a research related matter, which was amicably resolved. Later, Phakeng called the Ombud to congratulate her "*for taking on a white man*," a reference to Visser. The Ombud differed with her. She explained that the disagreement with Visser was work-related, and added that he was a well-meaning colleague.

[87] In her inter-action with her senior colleagues, it was reported by more than one witness, that Phakeng insisted that she was the only "*real*" black person in the executive because she had kinky hair, dismissing the claim by others, who identified themselves as black because they too had suffered racial discrimination in the past. Phakeng said openly there were too many Coloured and Indian people in executive positions. As Budlender put it:

"[A] lot of it was harping on race, so that people who weren't African were made to feel that they were tramping on toes all the time."

[88] Phakeng was particularly hostile to Feris, who she made a point of saying, was Coloured, not black, despite Feris' objections. Feris recalled – ironically during an executive team building session – the following exchange between them:

"We also had an early disagreement on the issue of racial identity. I asked her not to refer to me as coloured, that I identified as black. She told me that we are not the same black and as a result we are treated differently, especially in the Western Cape. Given South Africa's history, I agreed with her. However, I did not appreciate that she referred to so-called coloured people as "my kind". At an executive teambuilding session, during a trust building exercise she asked

that I “protect her from the coloured cabal at UCT.” I told her that I carry no knowledge of such a cabal and if it existed, that I am not part of it, nor do I know anyone that is and that it would make it difficult to “protect her” as per her request. She often referred to me as a different black, commented on the fact she had “kinky hair” and I did not. She said that when people look at me, they would not consider me black. I found these comments offensive and inappropriate.”

- [89] In November 2017, at a meeting of the senior leadership group of about 20 people, Phakeng became “enraged”. A witness described Phakeng’s behaviour as “ranting” incoherently, making a slew of accusations, personal attacks and racially charged accusations at some people, but aimed particularly at Feris. Feris left the meeting in tears.
- [90] Phakeng confirmed the incident but could not recall the detail. She suggested that Feris had manipulated the audience by crying. The Panel was taken aback when she added that black women don’t cry and that white and coloured women are taught to cry to evoke sympathy: “When things get tough you cry and leave,” she added.
- [91] The irony did not escape the Panel when another witness, testifying about an unrelated incident much later, testified that a “distraught” Phakeng phoned her one morning saying she felt under attack and that people were trying to get rid of her as VC. The witness added that Phakeng was “crying and screaming uncontrollably”. The Panel also heard evidence that at a Council meeting on 30 March 2019, which is referred to later, a rebuke from Pityana left Phakeng in tears.
- [92] Feris was not the only black woman who was hurt by Phakeng’s behavior. Dr Beata Mtyingizana (“Mtyingizana”) who was appointed as the Director of the International Academic Programmes Office (“IAPO”) at UCT in November 2017, provided a statement describing how Phakeng had humiliated her in front of colleagues and junior staff in meetings, to the point where it reduced her to tears. She complained to HR.
- [93] Phakeng recalled the incident but suggested that Mtyingizana’s apparent distress was work-related.

- [94] Mtyingizana stated that Phakeng's behaviour towards her began to affect her health. She left UCT in 2018, less than a year after her appointment. The Panel was unable to investigate the circumstances of her departure in detail because she was unavailable to testify in person.
- [95] In response to questions from the Panel regarding "*the personality issues*" Price encountered with Phakeng, he explained:
- "[S]he displayed the traits of what I think of as narcissism. She responded to any suggestions as if they are a personal attack. She felt there were conspiracies to discredit her and interpreted adverse events or comments as part of the conspiracy. She repeatedly boasted about her achievements and compared herself with others – for example, never failing to draw attention to her NFR rating and to others' lower ratings, or comparing qualifications and repeatedly emphasising the long journey she had travelled academically from township to DVC. She needed to make sure everyone knew about the various external boards she was on and about NGOs she had established and her philanthropic work. She seemed to need affirmation and for achievements to be recognised."*
- [96] Phakeng's perplexing behaviour was thus evident in the first year of her term as DVC.
- [97] During this period, she became interested in a VC post at another university, and asked Price for a reference. He declined, explaining that he did not think she was ready for the position based on the problems associated with her behaviour and its negative impact on the executive team. At that stage the team comprised the following people: Price (VC); Feris (DVC Transformation and Student Affairs); Professor Anton Le Roex (DVC Institutional Innovation). Phakeng (DVC Research and Internationalisation) and Pillay (Registrar). Ms Gerda Kruger ("Kruger") attended these meeting in her capacity as the Communications ED.
- [98] Phakeng was upset by Price's refusal. Their relationship deteriorated. The Panel heard from several witnesses that her antipathy for him was palpable. She accused some her colleagues of being loyal to him, not her. She began to believe there was a conspiracy to remove her as VC, even after Price's tenure

ended. Pityana observed that Phakeng's animosity to Price was "venomous". He added:

"Any positive reference to his tenure would elicit the most hostile response from her. So much so that she resisted the traditional publication of a report recording his 10-year tenure as the VC. It took the intervention of the Chairperson (himself) and Deputy Chairperson (Budlender) for it to be published."

Lange's Appointment

[99] Lange was appointed DVC: Teaching and Learning in February 2018. Her appointment was marred by an attempt by Professor Elelwani Ramugondo ("Ramugondo") and the Black Academic Caucus to challenge it in the courts. Ramugondo believed that UCT had violated its own policy on Employment Equity and its transformation objectives in appointing Lange, who she described as a "white female Argentinean". In her court papers she pettily accused Lange of misrepresenting herself to the Selection Committee by referring to herself as "professor" instead of "associate professor."

[100] The Registrar responded to Ramugondo's application on behalf of UCT. He stated that Lange was assessed by the Selection Committee to have appropriate executive management expertise and experience, deep knowledge relevant to a Teaching and Learning portfolio that included curriculum review and student access by disadvantaged students. All these attributes, he emphasised, were connected with the imperative for transformation. He concluded that Lange was appointable, while Ramugondo was not.

[101] Ramugondo's application was dismissed in the high court in February 2020. Her application for leave to appeal was dismissed in September 2020. A further attempt to the Supreme Court of Appeal also foundered in December 2020. She appealed again to the Constitutional Court, but withdrew the appeal, after arriving at a settlement with UCT in March 2022.

Phakeng's Appointment as VC

- [102] Early in 2018 Phakeng applied for the VC post at UCT, which was advertised as Price's term was ending. There were no outstanding candidates, possibly because of a reluctance to apply following the recent upheavals at UCT.
- [103] Pityana chaired the Selection Committee. Budlender and Ally were among its members. On paper, she was a strong candidate, as was the case when she had applied for the DVC post 18 months earlier. But the issues that had arisen concerning her poor teamwork and interpersonal relations had now become manifest.
- [104] Pityana was aware of these issues, if not all the detail, from Price's performance assessment of Phakeng at the end of 2017. He would also have been aware that she strongly disagreed with Price's assessment that she had met – not exceeded – her performance expectations. Price repeated these concerns to Pityana, and advised against appointing her.
- [105] Pityana, however, wanted her appointment. At that time the controversy of Lange's appointment as DVC, against the background of Ramugondo's racially loaded litigation was evident. Pityana had chaired the Selection Committee for Lange's appointment and was under personal attack for having supported it. This would have played on his mind with the VC's application, as she was the only African candidate, and a female.
- [106] The Selection Committee for the appointment of the VC debated the "*personality issue*" at some length. It was initially unable to reach consensus on her appointment. Pityana proposed that a smaller group from the Committee meet with him and Phakeng. When they reported back, the solution proposed, which Phakeng apparently agreed to, was that she would appoint a coach or personal mentor to help her overcome her personality issues. They further obtained her pledge to lead the executive team in a collegial manner. Pityana also assured the Committee and Council that he would "*manage*" her closely.
- [107] The Committee was urged to appoint Phakeng unanimously. Pityana was keen to boost her confidence because she was "*hyper-sensitive to criticism*". Pityana would also have been aware that any significant dissent may scupper her appointment in the Senate and Council.

[108] The Committee unanimously agreed to recommend Phakeng's appointment. The recommendation was strongly endorsed by the Senate and Council.

[109] The Panel heard repeatedly that everyone wanted Phakeng to succeed. As one witness put it, *"if she succeeds, we succeed."* She began her term as VC on 1 July 2018. During the period July 2018 - June 2020, Dr Reno Morar ("Morar") was appointed as COO and Professor Sue Harrison ("Harrison") was appointed DVC: Research. Exco was then made up of Phakeng, Feris, Lange, Harrison, Morar, Pillay and Kruger (when required).

[110] At the first meeting to welcome her to the VC's office, Phakeng told the staff that when Ministers are appointed in government they appoint their own staff, but she would not be able to do so because it would be contrary to UCT's policy. Present in the meeting was Ms Judith du Toit, the Director in the VC's office. The VC's comment left them perplexed and feeling unwanted. This attitude towards senior staff became a pattern of her engagement with her colleagues, particularly if they had worked closely with Price. She derisively called them *"Max's boys"*. Budlender, for example, although an office bearer of Council, was Price's *"fifth DVC"*.

[111] Instead of preparing the ground for a smooth transition from Price's administration to hers, Phakeng did the opposite. Four days after she became the VC, she emailed Price, copying Pityana, with a startling tone of language:

"1. For the next 12 months, you may not address any UCT constituency on or off campus, unless you are requested by the Vice-Chancellor.

2. If you want to suggest anything to the sitting VC, you may not copy anyone in the university.

3. Make sure that you copy the VC in all your correspondence about what the sitting VC of UCT or the executive should or should not be doing to advance the work of the university.

[Y]our presence destroys my confidence, energy and creativity and I can never perform at my best if you linger around because you always find fault with everything I do...I also indicated to you that we need you and I would like it to be possible for us as the leadership to be able to call on you as and when we

need to – this, however, should be at our discretion. You should never make an effort to make us feel that we should need you more than we do.”.

[112] As Deputy Chairperson of Council, Budlender realised that much of the responsibility for holding Phakeng to account would fall on her. She had assumed this duty when Price was the VC and Pityana, a businessman with responsibilities outside UCT, was unable to perform this task without her assistance.

[113] Soon after Phakeng’s appointment Budlender asked to meet her for lunch, but had to wait for two months before this materialised. Budlender recalled that several times during that lunch Phakeng emphasised her identity as a black woman, reminding Budlender that she was white.

[114] According to Budlender, Phakeng made racialised comments regularly to others, to belittle and humiliate. It didn’t bother Budlender personally because Phakeng could not dismiss her. But most were deeply offended.

[115] One instance that stood out and left the Panel shocked was the evidence of a senior member from HR, who is not African. She recalled a conversation with Phakeng when she prefaced her what she wanted to say with the words: “As a black person....”. She had not gone further when Phakeng interjected:

“...[Y]ou’re not Black...you don’t have hair like me, you don’t smell like me, you don’t look like me and you don’t taste like me.”.

Apart from being offensive, the interjection left the witness wondering what right Phakeng had to allocate a racial identity to her.

[116] In one of the early meetings of the Council Exco in 2018, at which Pityana and Dr Shuaib Manjra (“Manjra”) were present, they recalled being startled by a comment from Phakeng that she did not believe in non-racialism. Pityana, rightly, rebuked her and reminded her that non-racialism was a constitutional value, which, whatever her personal beliefs may be, she was obliged to uphold.

[117] The VC’s racialised comments were experienced across racial lines. Two incidents, also early on in her tenure, were related to the Panel: The first was by the Ombud, an African woman. Phakeng invited her to dinner at her official

residence. The Ombud thought it inappropriate to attend because it could compromise her independence and declined the invitation.

[118] Phakeng felt slighted and questioned whether she also refused to attend dinners with Price. The Ombud confirmed she had also turned down his invitation. Phakeng insisted that she provide proof of her email communications with Price. The Ombud produced them.

[119] In another meeting, a junior African female member in the Human Resources (“HR”) Department differed with Phakeng over a transformation question. Phakeng called her outside and, according to a witness, the following exchange occurred:

“[Y]ou don’t speak until I tell you to speak, and you don’t ever insult me in front of these White people. And X was quite shocked, and X then went to her office a few times to say I need to speak to you. My role is that of advisor. I cannot keep quiet...I cannot just (not) speak, I’m not a minute-taker.”

[120] The staff-member stood her ground in this instance – to her credit. Witnesses gave evidence that the usual response, which became part of the institutional culture at Bremner, was to back off because it was at best unproductive and at worst career limiting to be opposing Phakeng.

[121] Not all Phakeng’s relationships started on the wrong footing. Lange’s was a case in point. This is how Lange recounted her initial experience:

“We worked closely with each other and got on very well. She relied on me and I trusted her. I drove her around, I was often in her office and she in mine. The messages exchanged during this period demonstrate camaraderie and warmth between us. At some point before June 2019 she indicated that if Prof Ramugondo was successful in her challenge to my appointment she would consider appointing me as Senior DVC in order not to lose my skills.”

[122] However, Lange continued:

“[S]he did not like it when I disagreed with her or when I questioned her actions (such as how she chaired a meeting or treated a colleague). As a result, I

backed off from indicating disagreement with the VC but I kept on working with the VC and supporting her office...”.

[123] Lange further observed that: *“The VC was continuously concerned about Council not valuing her and supporting her work. She was nervous and wary of Council. Though, I have no recollection of any incident between July and December 2018 that indicated any unsupportive behaviour from Council... She was almost always concerned about a Council plot to unseat her. She did not trust Mr Pityana, the Chairperson of Council, or Ms Budlender, the Deputy Chairperson of Council. I believe the distrust came from the interactions between herself and both Chairperson and Deputy Chairperson in the process of her appointment.”.*

[124] Lange also disclosed a deeply troubling event demonstrating that Phakeng would resort to manipulating a selection process to counter what she considered was Pityana’s hostility to her.

“As an example of the VC’s concerns about Council, an incident during the process of selection of the DVC: Research might be useful. There were two rounds of advertisements for the post. In the second round there were three candidates: two white women internal candidates, (Prof Sue Harrison and Prof Nicola Illing) and a black external candidate (Prof Deresh Ramjugernath) who had all the credentials for the job, including being the DVC Research at UKZN. The VC was convinced that the latter candidate had been pushed by Mr Pityana as a possible replacement for herself. She told me as much privately in my office. Therefore, she managed the selection panel (which she chaired) for this candidate not to be selected for appointment, despite the objection the Employment Equity representative, Dr Russell Ally, raised. I was also a member of the selection panel but by then I had learnt not to contradict her in public. I did not say anything about this to Mr Pityana. I think I mentioned the incident to Prof Feris, I do not recall discussing the matter with Dr Ally. In the end the selected candidate was Prof Harrison, who had full support of Senate. In bringing this matter up, I am not questioning the final decision of the selection panel, but I am highlighting Prof Phakeng’s sense of not being wanted by the Chairperson of Council.”.

[125] There are at least three reasons why this event is deeply troubling. First that a member of Exco – in this case Lange – decided early on that she would only survive by not contradicting Phakeng, even in as an important matter as the appointment of a DVC. Second, what occurred here – Phakeng’s alleged manipulation of a selection process to achieve a pre-conceived outcome – was irregular and unlawful. Third, as the evidence shows, this was not an isolated incident. Disregarding established processes of good governance, especially in regard to the appointment, promotion, and termination of senior academics and staff, including the irregular granting and refusal of performance bonuses became a feature of Phakeng’s leadership, particularly during Ngonyama’s Council, which aided and abetted her actions.

[126] Pityana testified that soon after her appointment Phakeng seemed to be increasing tensions rather than reducing them, as she had promised she would. She unreasonably targeted Feris by disagreeing more forcefully than necessary in meetings and often remarked that she was the only black person in the executive. Pityana observed that she appeared to be using her new found power to settle scores – a reference to her treatment of people she regarded as loyal to Price.

[127] Feris’ experience confirmed this:

“Once Prof Phakeng became VC, our relationship deteriorated further. She started to gaslight me early on, telling me that I am incompetent and inexperienced. She berated and criticised my work constantly. She chastised me in executive and other meetings. She constantly reminded me that she was the VC and that she has power over me. I felt humiliated and started working with a coach to assist me with coping skills in my relationship with her. I felt that I was walking on eggshells, not knowing when or how I may be transgressing. She often berated me for seemingly insignificant issues.”

[128] Phakeng denied “disliking” Feris but confirmed that she had no confidence in her:

“I wouldn’t call it an intense dislike. I mean, I think Prof Feris and I disagreed vehemently when we were still DVCs and I felt that again she’s – she was in my view coming with a stereotype about Black people and I just felt

uncomfortable and it wasn't a dislike. It wasn't a natural dislike for her. It was the things that she wanted to do that I didn't agree with and I also felt that she was parachuted in this job. She really wasn't ready for this. Never been Head of Department. Never been Dean. Just be a Professor, boom and she's DVC, but then she wanted to behave like she knows more than everybody."

[129] Ally, once Phakeng's trusted advisor, testified that Phakeng had made it clear that she would not support Feris for a second term as DVC for Transformation and Student Affairs. She believed from the outset that Feris was neither competent nor qualified to hold the position and had been appointed only because the Black Academic Caucus of which Feris was the former Chair, had supported her.

[130] In meetings Phakeng openly humiliated and berated Feris. She held the belief that Feris had opposed her appointment – which was true – and *"led a cabal from within the corridors of Bremner"* – which was not. Phakeng referred to this alleged *"cabal"* on a Cape Talk interview in July 2018, while discussing the death of Prof Mayosi.

[131] On 3 August 2018, barely a month after Phakeng's appointment, and because of concerns about her behaviour, Pityana invited a few external members of Council to a dinner at Pigalle, a restaurant in the City. In attendance, were Pityana, Mr Norman Arendse (*"Arendse"*), Manjra, Ngonyama, Ms Tshidi Mokgabudi (*"Mokgabudi"*) and Budlender. The aim was to find a solution to the difficulties he had been experiencing with Phakeng.

[132] Pityana described the difficulties he had in his interaction with her to his colleagues. They also discussed the fallout after tragic death by suicide of Professor Mayosi in July 2018, because Phakeng had blamed UCT students for the tragedy. Pityana felt something needed to be done – and everyone present agreed – that Phakeng's behavior and her relationship with Council was a problem.

[133] The responsibility for dealing with accountability and professional conduct of the VC belonged to the Chairperson and Deputy Chairperson, on behalf of Council. Instead Pityana asked Mokgabudi and Ngonyama to talk to Phakeng

about her behaviour in the hope that two African women would remove any race or gender sting that his or Budlender's presence may provoke. Further, the relationship between Phakeng and Pityana and Budlender was increasingly strained, which, Pityana thought, would further complicate the discussion.

[134] This initiative changed little. In August, a month later, Feris felt compelled to write to the VC to ask her to desist from "bullying" her. She copied the Chairperson and Deputy Chair:

"Dear Prof Phakeng. I am writing this to you as my line manager with CC to the Chairperson and Deputy Chairperson of Council as Council has appointed me in my role. For weeks now and since you have taken up your position as Vice Chancellor I have been subjected to multiple encounters of private and public humiliation and disrespect at your hand. I am writing to formally request that you put an end to this behaviour which has had a profound impact on me; on my mental state and that has the potential for harm to my professional reputation. You have created a work environment which has become untenable and has made it increasingly difficult for me to perform at an optimal level. While I am happy to provide a broader account of events and will do so if necessary, I will use this morning's executive meeting as an illustrative account of the type of behaviour which overtly and covertly seek to humiliate, intimidate, victimise and bully..."

[135] Later, Feris became aware that Phakeng was recording their meetings, without her knowledge and consent, which led to her complaining to the Ombud. Phakeng, apologised for having done so. This also led to a conversation involving Pityana, Budlender and Phakeng. For a while – and only a while – this meeting had salutary effect on Phakeng's behaviour.

[136] Phakeng also had a poor relationship with members of Feris' team. On one occasion, in November 2018, Phakeng attended a workshop with the Director of the Office for Inclusivity and Change (OIC), Dr Sianne Alves and her team at which Feris was absent. Alves recounted her experience with Phakeng to Feris, who testified:

"[She] broke down in tears as she recounted her experience. Prior to this meeting the Transformation team had a workshop on transformation in October

2018 with the Leadership Lekgotla. During the workshop the VC apparently fell asleep and the Director of Transformation, Dr Alves, asked her a question not realising that the VC had been sleeping. The VC was unable to reply and felt humiliated.

This became apparent during the meeting of 6 November which started with the VC accusing Dr Alves of playing power games with her by calling her to a meeting without an agenda (prior to the meeting the purpose of the meeting – which was to present the work of the transformation team, was conveyed to her). She accused her of wasting her time, of making her feel “awkward”, of patronising her and finally of deliberately asking her a question during the Leadership Lekgotla (“LL”) meeting while she was falling asleep. Despite Dr Alves by her own account apologising profusely, the VC asked her to stay behind after the meeting and told Dr Alves “if you want to play power games, you should know that I am the VC. I always win.” She said this while members of the exec entered the meeting room and as such Dr Alves was humiliated in front of senior colleagues. Dr Alves recounted her experience to the Ombud as well.”.

[137] By March 2019, Budlender was frustrated by what she considered was Pityana’s failure to act in light of the mounting evidence about the VC’s behaviour. Budlender emailed him on 3 March 2019 describing 11 anonymised examples of people who had complained about the VC’s treatment to the Ombud. Budlender also met with the Ombud monthly and asked her to compile a list of these complaints. It was apparent from the list that those who felt victimised were of all races, male and female, and spanned different categories of employment.

The June 2019 Council meeting

[138] Within the first year of her appointment, Phakeng and Pityana were weary of each other. He and Budlender were struggling to correct the problems of Phakeng’s leadership. Phakeng believed that they and others in Council and Exco were plotting to remove her. The tensions between Pityana and the VC burst into the open at an explosive Council meeting on 22 June 2019. It shocked several Council members.

[139] The minutes of that meeting are anodyne. The evidence, however, revealed that the meeting was anything but. The source of the explosion was a discussion regarding funding. A Council member requested that the ED responsible for preparing funding proposals to donors be invited to address Council on how the impact of the poor economic outlook for the country may have on UCT's capacity to raise funding. The question elicited an angry response from Phakeng, who believed that Council should not be asking for a report from an ED without her approval. She viewed the request as evidence that Council had no confidence in her.

[140] Pityana was visibly angry and rebuked her. The minute records that he said:

"If Council did not trust the Vice-Chancellor it would have taken steps to terminate her appointment. The Chairperson also expressed his discomfort with behaviour that in his view sought to silence Council from raising questions that Council thought it should ask. He pointed out that there was no need to respond in a defensive way, and that by asking the questions and raising the issues that they did, Council members were carrying out their fiduciary duties. The Chairperson insisted that it was the duty of Council to ask any question and comment on any issue that it felt its fiduciary responsibility required it to do."

[141] According to a Council member, Pityana's rebuke shook Phakeng. After several members tried to mollify her by assuring her of Council's support, the meeting adjourned.

[142] When the meeting resumed there was further discussion regarding the tensions between Phakeng and members of Council. She disclosed that she was on anxiety medication to deal with the stress of attending Council meetings. The meeting concluded with the adoption of a proposal that an ad hoc committee be appointed to determine what the underlying issues giving rise to her belief that she was not trusted. The Committee comprised Ms Rahmat Omar, Mr Ezra Davids and Rousseau.

[143] The following day, Phakeng discussed what had transpired with Lange. She accused her and Feris of not supporting her in the meeting. She implied that this was because they were favoured candidates to replace her as VC after Council pushes her out.

The Omar, Davids, Rousseau Report

[144] The Committee produced a Report, which Council adopted on 12 October 2019. It was authored by Rousseau, and is attached as Annexure G. It investigated the relationships between the VC and Council and between Exco and Council. The Committee interviewed several members of Council and Exco, including the VC, Pityana, Budlender, Lange and Feris.

[145] In summary, Phakeng reiterated her belief that Council had no confidence in her, which she said was evident from the time of her appointment. In addition, the subsequent hostile interactions between her and Pityana, and also (but less so) with Budlender, their micromanagement of her, and Council's "excessive interest" in management decisions instead of governance all pointed to a lack of trust in her. She told the Committee that Exco was working better, despite earlier tensions. This was not true. Lange testified that the meeting was a watershed in executive relations, which became worse thereafter. Subsequent events bore this out.

[146] The Committee identified a few issues that required further attention including: governance, oversight and accountability. It emphasised that Council's role in asking questions and commenting on issues within its fiduciary responsibility should not be met by an adversarial or defensive reaction – an implicit rebuke of the VC's hostility to being questioned. There was muted criticism of her social media profile which "seem unrelated to the role of a VC", and contribute to difficulties in relationships, in particular with the Chair. The Committee found no credible evidence for her fear that Council was preparing to terminate her employment.

[147] The Committee concluded:

"We cannot find compelling evidence of systemic mistrust of the Vice-Chancellor from Council. In fact, there is high level support for the Vice-Chancellor from Council in general. The impression of such mistrust or lack of support is in the main driven by factors such as misunderstanding of the role of Council and the fact that Council is populated by strong personalities who might

not always be aware of how their interventions are interpreted or received by the recipient.”.

- [148] Rousseau testified that there were several constraints in preparing and drafting the Report: First, its main purpose, though not clearly articulated, was to support the VC, rather than find fault with her; second the Report was redacted to protect those who were not willing to speak for fear of reprisal; third, as this was not a fact-finding inquiry, untested allegations were not included, nor were they put to implicated parties; fourth, the Report’s emphasis was on all parties – the VC, Exco and Council – to understand the source of the “*misunderstanding*” between them, and not just the VC.
- [149] As the purpose of the Report was “*to understand the VC’s concerns*” rather than investigate any complaints, it suggested that “all the senior leadership...participate in a 360-degree review of their portfolios. Presumably this would allow those participating in the process – including and especially the VC – to receive anonymised feedback regarding their leadership. The assumption, of course was that those participating in this process would have the maturity to use it as a developmental tool.
- [150] It is apparent, in hindsight, that the inquiry skirted around the primary problem, which was that the source of the tension between Phakeng and Pityana on the one hand, and Phakeng and Exco on the other – the deep and profound difficulties with her leadership.
- [151] Later in 2019, Pityana met with Budlender and the Ombud to discuss the increasing number of complaints about Phakeng’s behaviour. It is not clear whether any concrete suggestions were made at the meeting, but both the Ombud and Budlender left discouraged by Pityana’s unwillingness to tackle the problem more decisively.

Performance Management

- [152] Attempts by Pityana and Budlender to manage Phakeng were fraught, from the beginning. During Price’s time in office a system of monthly meetings was introduced involving Budlender, Archbishop Ndungane, then Chairperson of Council, and Price. In those meetings, Price prepared an agenda, to which

other matters were added, if required. They also met with the Registrar to prepare the Council or Council Exco agenda before the meeting.

[153] Price described the rigour of his performance management process as follows:

“There were a battery of questions some of which were generic – about leadership style, responsiveness, listening skills, openness, management of meetings, management of conflicts; and some were related to my specific performance objectives – transformation, changes of specific policies, fund raising, problem solving, succession planning, external relations, university reputation. I also completed a self-assessment on the same questions from a 360 survey and the discussion focussed particularly on the divergent scores and low scores. The purpose was both developmental – to highlight problem areas and plan improvements, and to monitor change from year to year which would impact my performance rating and bonus. I also prepared a narrative report on my achievements during the year and my assessment of them which the chair and vice-chair commented on.

The Report was sent to me in advance of the meeting with the chair and vice-chair to discuss it. We all signed off on the final Report – just for noting – there was no further appeal or adjudication. The Report was sent to the Remuneration Committee to decide on a bonus. (I obviously recused myself from the RemCom for that item). Individual performance scores were not reported to the full Council, but the bonuses were as part of the annual financial statements.”.

[154] Budlender testified that attempts to continue monthly meetings with Phakeng were less successful. Sometimes Pityana held meetings with Phakeng, without Budlender present, because he was keen to establish a good working relationship with her. At other times he mandated Budlender to meet with her when he was not available, or only for part of the meeting.

[155] Phakeng did not draw up an agenda for each meeting as Price had done, presumably, in Budlender’s view, because she was averse to be called to account by her “bosses” – a derogatory reference she made about them. Budlender’s recollection of these meetings was that they were unproductive,

discussing relationship issues rather than strategic ones. Ironically, Phakeng had the same criticism of the meetings.

[156] In regard to Pityana's assurance that Phakeng would appoint a coach or mentor, Phakeng testified that she had worked with one at Unisa. She reported that she had employed a mentor at UCT. Pityana and Budlender had no direct knowledge of the person. Phakeng reported after one session that the coach was "okay" – Budlender's description – but that she (Phakeng) was too busy to meet often. At a later stage, when it was suggested that she needed more support, she responded that she had a therapist who was giving her the support she needed. It became apparent, however, that whatever support Phakeng was receiving, there was no discernible improvement in her behaviour.

[157] This much seems obvious. That the appointment of a VC can be made subject to a condition that a mentor be appointed to overcome a major leadership deficit was unwise. Phakeng, understandably, resented what she considered was an imposition. Instead of helping Phakeng, it exacerbated the mistrust between her and Council.

[158] Apart from the problem of imposing a coach on Phakeng, attempts to hold her to account were difficult. She resented Budlender asking her to justify some of her personal expenses, such as her use of an Uber to and from her official residence, and thought that having to explain her transport expenses amounted to bullying.

[159] Phakeng resisted undergoing a voluntary 360-degree self-evaluation process, as Price had done. She perceived it as process that exposed her to unfair criticism. Price had encouraged her to try it as a DVC because he found it beneficial, but she did not. Pityana made no progress with her either.

[160] Phakeng believed that Pityana and Budlender were bullying her in their monthly meetings and dismissed her complaints. They reminded her that as VC she had more power than anyone else at UCT. She wondered whether she was treated this way "*due to her race, gender or perhaps (her) petite and colourful nature.*".

[161] Budlender became responsible for Phakeng's performance appraisals. She tried to get Phakeng to prepare a plan for her appraisal. It was apparent that Phakeng had difficulty formulating one. Budlender wrote to Pityana on 6 December 2019 to raise the problem:

"[W]e are now more than five months into the period July 2019 to June 2020 and still don't have a performance agreement with the VC. So we are at risk of the same problem as last year – accepting a sub-optimal plan because we simply can't wait any longer."

[162] The first appraisal was done at the end of 2019, when Phakeng had been in office for 18 months. Members of Phakeng's Exco participated and submitted confidential responses to questions from Budlender. This system is used to assist Council as a tool in managing the performance of the VC. The rating may fall into three categories, i.e., whether the VC "met," "did not meet" or "exceeded expectations" in each area. The VC provides a self-assessment and the Chairperson or Deputy Chair, as the case may be, does the assessment on the basis of information from the VC and other sources. Where the VC exceeds expectations RemCom recommends a performance bonus. The system was also used by the VC with DVC's and senior executives who reported to her.

[163] For the 2019 appraisal, Budlender rated Phakeng as having "met expectations." She, however, flagged "*serious issues*" for Phakeng to improve. These included:

- *"Council accountability...needs immediate attention. This would include keeping the Office of the Chair, in particular informed of all developments that pose a risk to UCT.*
- *The VC needs to trust that Council's critique, when it occurs is not an attack on her personally.*
- *The VC needs to be more "present" at UCT. This means fewer engagements outside South Africa and also Cape Town, so that more attention can be paid to the strategic functioning of UCT.*

- *The VC needs to be more engaged in the South African higher education arena, together with her VC peers. This includes regular attendance at USAF meetings.*
- *The VC's use of social media needs to be tempered, so that it is more professional, less combative, and less about the VC as an individual. The need to have less focus on the VC as an individual also applies to other areas, including frequent interviews focussing on the VC as a person.*
- *References to the previous VC and the previous administration need to stop. These are unprofessional, disrespectful of UCT, and inappropriate. These references also promote a narrative that the VC is UCT and vice versa.*
- *The focus on race, kinky hair, and difference needs to be toned down...It undermines rather than promotes inclusivity. Further the differentiation between Black African and Coloured/Indian is divisive...*
- *The VC's relationship with senior leadership needs urgent attention. This includes the executive but extends beyond it. In particular, it seems as if the executive directors (ED's) are being marginalised...*
- *The style of the VC's engagements with others needs urgent attention. There are too many stories of people being publicly humiliated, threatened and silenced, whether in small groups, or in small and large meetings involving diverse... stakeholders. While the VC might feel that she is the one who is being bullied, she has more power than anyone else in UCT and needs to wield this power with this understanding rather than as someone who feels under attack...Her engagement is sometimes seen as vindictive. This results in staff (and students) deciding to remain silent and not to offer their ideas, views and knowledge rather than risk the danger of an unpleasant response from the VC..."*

[164] These comments by Budlender, intended as feedback, were supported by the evidence of many witnesses as stated earlier. In her testimony to the Panel Phakeng disputed almost all of them. She denied that she "attacked" anyone and viewed this comment as "gaslighting" her. Regarding her reference to Price, she untruthfully stated that she only referred to him and his administration

when necessary and denied that she was “*disrespectful or unprofessional*” when referring to him. She speculated that Lange must have been the source of one of the criticisms against her and added that she erred in asking Lange to attend one of the USAF meetings on her behalf because “*she reported her to her line managers.*”.

[165] As regards the criticism of her focus on race, kinky hair and difference, she was “*astonished*” that her line managers were preoccupied with such matters. She added, in her response to Budlender, that she regretted that her hair drew attention and that she only described her hair when people asked about it. “*I did not realise that responding to such questions is divisive. I often respond honestly to the questions because it is important for young black women with kinky hair like mine to know that keeping my hair natural is deliberate and a statement of affirmation for everyone with hair like mine.*”. This response was disingenuous; she knew well that the criticism was not aimed at any affirmation of herself or other young black women, but the divisive way she used her identity as an African woman, to exclude others.

[166] Much later, in one of her public interviews, reported in IOL of 11 March 2023, she again distorted the criticism that she tone-down her divisive talk of kinky hair by saying that she was “*told (her) afro was too kinky and (she) should tone it down. (She) did, and began braiding (her) hair instead.*”. This was a transparent attempt to falsely suggest to the readers of this publication that UCT unfairly discriminated against her because of her kinky hair.

[167] Phakeng denied marginalising the ED’s and believed it was unfair to attribute blame for tensions in Exco to her. She testified that she was infuriated and offended by the suggestion that she had humiliated and silenced anyone. “*I have never publicly or privately humiliated anyone, nor have I attempted to silence or threaten anyone*” she insisted mendaciously. Phakeng regarded criticism about her media interviews focusing on her as absurd. She felt it “*worth noting*” that social media “*provided a valuable outlet for (her) to unwind and decompress following hours of putting up a strong face in a highly toxic work environment.*”.

[168] Her written responses to Budlender were, unlike her testimony to the Panel, more tempered, and on her own admission, not forthright, but aimed at placating her. It is evident that Phakeng was dismissive of attempts to performance manage her and rejected the criticism of her behaviour.

The Ombud Report 2018 to 2019

[169] The Office of the Ombud was established in January 2011. The Ombud served a five-year term that was extended for a further five years in 2016. Her second term ended in December 2021.

[170] The object of this Office, as described in the preamble to its original terms of reference (2011-2020) was to act as a *“neutral, independent, informal and confidential resource to facilitate fair and equitable resolutions to concerns and problems raised by any member of the university community.”*. To ensure its independence it had a reporting line to Council through the Chair. The Ombud prepared an Annual Report to Council. She was required to report to the VC for administrative and budgetary purposes.

[171] The way the office was required to work was that the Ombud received *“visitors”*, who had grievances but were unwilling to use the formal grievance or other procedures available to them for this purpose. Their complaints were treated confidentially. The Ombud, therefore, offered a safe place for visitors to raise their complaints without fear of repercussion. It is unclear whether the principle of confidentiality, which lies at the heart of the Ombud’s function, extended to respondents against whom complaints were made.

[172] On an ongoing basis the Office provided feedback to the VC and leadership team regarding the kinds of issues that had arisen and offered advice, without disclosing the identities of visitors, on how to deal with these problems. The Ombud, therefore, sought to be a catalyst for institutional change. The Ombud did not perform an investigative or adjudicative function.

[173] The Annual Report for Council, as described in the Ombud’s job description, was *“based on anonymous aggregate data (and) discusses trends in the reporting of grievances and concerns, identifies patterns or problem areas in university policies and practices, may recommend revisions and improvements,*

and may assess the climate of the campus.”. The Report thus contains statistics of the number of visitors to the Office, the categories of issues that have arisen and possible recommendations for improvement.

[174] The job description also emphasised the requirement of the Report’s *“impartiality”* and *“neutrality”* – the Ombud *“shall not take sides in any conflict dispute or issue”* and is required to *“take all parties’ rights and interests into account.”*. The Ombud was required to act fairly, not to judge and do no harm.

The Ombud’s 2018-2019 Report

[175] Budlender played a support role in offering advice and oversaw the Ombud’s reports for Council. In February 2020 the Ombud delivered a draft Annual Report to Budlender. It covered the year July 2018 – to June 2019, coinciding with Phakeng’s first year as VC. The Report is attached as Annexure “H”

[176] Budlender realised that this Report differed from preceding ones. It had two parts. The first, was an unusual six-page message from the Ombud, which, she said, described her *“honest reflections”* on this reporting period, which *“changed dramatically”* from earlier ones. The second, adopted the style of previous reports, using aggregate data to comment on trends and concerns.

[177] It was the first part that surprised Budlender for its forthright criticism of the VC. The Report read:

“The office of the Vice-Chancellor, Deans and Executive Deans...are important for the success of my office. Not only do they sometimes make decisions...that appear to be unfair, which lead to complaints to my office, they are also the people I often go back to with recommendations...The nature of my feedback and approach is to...discuss how this can be remedied. Sometimes this leads to changes in policy or a process that was followed...

However, in this reporting period, suddenly it seemed that I was not to be trusted. Instead my office seems to be seen by the VC...as supporting transgressions and advocating...wrongdoing. I told her that I noted that there was a case she suggested be brought to my attention and another she seemed to have finalised. I told her that my views on both cases was that there were considerations that had not been explored fully. I proposed that we meet so

that I could explain my views. I do not know what this might have triggered since she became angry and made false assertions about my office and its mandate. She underlined her views by stating...that she was ready to meet these students in court...

[A] number of [other] work-related complaints came to be about professional interactions with the VC where people felt bullied, silenced, undermined, rebuked and/or treated unfairly. Their pain was visible. Some affected bystanders also came to express fear and told me how they were impacted individually by different incidents...Not one of those who brought these issues wanted me to approach the VC as they feared retaliation. The bystanders said they would not want to experience what they saw...happen to others...The visitors came in different capacities, but all spoke about the same fear. As a result of their not wanting me to approach the VC, I focussed on their own well-being....”.

[178] Regarding the Executive and Deans, the Report added:

“It became apparent that the Executive did not understand the role of the Ombud, that they had not been reading the reports, or that they wanted to recreate the role in a manner that did not interfere with academic decisions...I have at times worried that the views of the Executive might influence how other members of UCT engage with my office. However, apart from push-back from Deans, commitment to help deliver fair outcomes across UCT is growing....”.

[179] Budlender called the Ombud to discuss whether she was comfortable with facing whatever hostile reaction the Report may provoke. The Ombud’s response was that she could not continue her work without taking this step. After editing the document, Budlender sent it through to Pityana for review. He was too busy to read it and told her to proceed in accordance with her “wise” judgment.

[180] Budlender emailed it to the VC for comment. She, in turn, forwarded it the other members of Exco, without reading it.

[181] On 2 March 2020, now aware of the Report’s content, Phakeng responded to Pityana, asserting that she was “shocked” by it. She added that: she had not

had the opportunity to respond to the allegations; the disagreements she had had with the Ombud did not stem from a lack of respect for her office; and that its tone and the manner in which it was submitted was contrary to the Ombud's function as a neutral or impartial dispute resolution practitioner. Phakeng requested Pityana to instruct the Ombud to withdraw the Report, with an apology "*so that a proper process can be followed, and confidentiality maintained.*".

[182] Of course, Phakeng had been given an opportunity to respond before she forwarded it to Exco, but she did so before reading it. Her complaint in this regard was misplaced.

[183] Later that morning, a meeting was held at which Pityana, Budlender, Phakeng and the Registrar were present to plan the agenda for the Council meeting on 14 March. They disagreed over what to do with the Report. The disagreement led to Budlender's resignation from Council, which she explained in an email to Council on 6 March:

"[At the agenda planning meeting] the Chairperson said the Ombud Report should be withdrawn from the agenda and another way found of dealing with it. I said I was uncomfortable with this approach as this was a Report by the Ombud to the Council, by whom she is appointed, and we should not be interfering with the Ombud fulfilling her accountability duty to Council and Council fulfilling their responsibility of overseeing the Ombud, engaging with the Ombud, reflecting on what she reports, and determining what this means to UCT. Further, given that the Ombud is meant to be independent, neither the executive nor the Council should be determining what she can or cannot say. I am afraid I cannot serve on Council in these circumstances."

[184] Budlender explained to the Panel that her resignation was "*the final straw*" following Pityana's failure to take concrete action to deal with the problem of the VC's leadership, that was now laid bare in the Ombud's Report.

[185] On 3 March 2020, apparently unaware of Phakeng's response to Pityana, or the disagreement at the agenda planning meeting, Exco considered the Report. Phakeng was not present. Exco's view was that Council should consider the Report and determine how it wished to deal with it. It thought that because the

Report's emphasis was on the conduct of the VC, she should respond to the allegations against her in a process determined by Council. In regard to the Report's reference to Exco, it also decided that this should be dealt with only after Council had determined the process.

[186] On 7 March 2020, Pityana emailed Phakeng's hostile reaction to the Ombud. The Ombud replied on the same day saying she found the VC's remarks about the Report "*shocking*." The following day, on 8 March 2020, Pityana received Exco's "*holding response*" of 3 March 2020.

[187] On 8 March 2020, Phakeng submitted a formal, detailed thirteen page response to the Report. In summary, she: took issue with the "*vague and unsubstantiated*" allegations against her; complained that she was not afforded the opportunity to be heard before the Report was compiled; alleged that the Ombud had breached the principle of confidentiality by identifying her personally as the source of specific offences; claimed that the Ombud had abused her office by cloaking personal grievances in the form of a formal report to Council, and that she had acted partially, mala fide and with bias in so doing. She also asserted that the Ombud had acted outside her authority by including the offending portions in the Report.

[188] In conclusion, Phakeng demanded that the Report be withdrawn and that the Ombud apologise for the harm caused to her. However, she also offered mediation as a possible way to resolve this issue.

[189] The Ombud responded fully on 13 March 2020 asserting that she had acted properly and within her mandate. Pityana also visited her office requesting her to amend the Report by removing the bullying allegations against the VC. She refused to do so. Pityana, thereafter, convened a meeting of the Council Exco to consider how to deal with the issue at the Council meeting. It decided to request the Ombud to place additional information before Council.

[190] On 14 March 2020, Council met, but the Report did not serve before it. Instead Pityana informed the meeting that he intended to deal with it in "*another way*" which, it seems, was to obtain legal advice. Council also resolved to convene a special meeting to discuss the Report, and circulate it to members before the meeting, together with responses from the VC, Exco and the Deans.

[191] On 16 March 2020, The Ombud provided the “*additional information*” requested by Council’s Exco. This included, but was not limited to, the following:

- 37 “*visitors*” across UCT, including Faculty, Professional, Administrative Support and Service (“PASS”) staff, Students and some externals complained about the VC. Some of these were surrogate complainants who were affected by the public humiliation of others in their presence.
- Every visitor complained about a debilitating fear in one form or another, while some expressed disappointment and confusion, especially since these were random occurrences.

[192] The Ombud explained further that she had met with the VC on three occasions during the reporting period. In one meeting the VC told her that she did not trust her. In another she told her that she kept a black book of people who do not approve of her, including the Ombud. Phakeng denied this to the Panel.

[193] Following these meetings with Phakeng, the Ombud held a feedback meeting with Pityana and Budlender regarding her relationship with the VC. They informed her that the VC had complained to them about her (the Ombud) having allegedly bullied her. At a third meeting, the Ombud asked the VC about this allegation. The VC denied she had complained to them about her.

[194] On 1 April 2020, the DVC’s and COO sent a further response to Pityana, reiterating their earlier stance that Council must “*formally prescribe the way it intends to deal with this matter both substantively and procedurally*” before Exco was able to respond. They provided further clarification on 6 April, reiterating their earlier stance.

[195] Given that the Ombud’s Report, with its controversial introduction, departed from earlier reports, and made allegations against Exco, the Deans, and particularly the VC, the approach they adopted was prudent in the circumstances.

[196] Phakeng was, however, furious with her executive colleagues. Her view was that Exco, as a whole, should respond to the Report and support the dismissal of the allegations against her. She disagreed with the proposal that Exco and herself, being interested parties, should recuse themselves from the

forthcoming Council meeting. An email exchange between the Phakeng and her colleagues on 12 April revealed the depth of her fury.

[197] Their attempts to explain that their proposal to prescribe a clear process for handling the Report was in UCT's best interests provoked further hostile reaction from her. She believed her colleagues were ganging up against her.

[198] The Deans were given limited extracts from the Report for a response pertaining to comments about them. They answered cautiously, making the point that as they had not received the full Report, they reserved their right to respond later, if and when specific details were provided regarding any concerns about them.

[199] Council held a special meeting on 14 April 2020, but no further documentation was placed before it. There was an attempt to rescind the motion of 14 March 2020 for the Report and additional information to be considered. But that was defeated.

[200] On 15 April 2020, the VC's lawyers wrote to Council threatening legal action should the Report serve before Council.

The Legal Opinion

[201] Pityana obtained a legal opinion, dealing inter alia, with the following matters: whether the Ombud's Report exceeded her mandate and terms of reference; what the legal consequences would be if it served before Council in its present form; may Council rescind its earlier decision of 14 March 2020 to circulate it; whether the Chairperson of Council or Council itself may instruct the Ombud to vary or amend it; whether there were other steps Council may take to address the situation, and whether there were risks to UCT by the publication of the Report.

[202] The opinion, prepared by Counsel, ran into 73 pages. It explored, in detail, the mandate, terms of reference and job description of the Ombud, the content of the Report, and the opposing contentions of the interested parties, particularly of the VC and the Ombud. It is attached as Annexure "I".

[203] Counsel advised that the Report ought not to serve before Council if it included the allegations against the VC. This is, so Counsel reasoned, because it breached the foundational principles of the Ombud's terms of reference, and job description in multiple respects, particularly as it had exceeded its mandate by naming the VC personally. Counsel, accordingly, advised that the Chairperson was legally obliged to refuse to permit publication of the offending parts of the Report.

[204] Counsel also advised that Council had two other avenues available to it. First, it could follow a mediation process (although it is unclear what was to be mediated). Secondly, the issues raised in the Report may be referred to a formal grievance mechanism initiated by Council through the appointment of a sub-committee.

24 April 2020 Council Meeting

[205] On 24 April 2020 the matter again came before Council. The minute records that the DVC's and COO, properly, gave notice of their conflict of interest as Exco had been implicated in the Report. The VC suggested that they participate in the meeting, but abstain from voting. Council decided that she was conflicted and requested the DVC's, COO and VC to recuse themselves from the meeting. The VC reiterated her view that she did not believe that she was conflicted but agreed to recuse herself grudgingly "*out of respect for Council.*". She was clearly conflicted and obviously wrong about her and her colleagues not having to recuse themselves.

[206] In light of the advice received from Counsel, Council decided that only the second part of the Ombud's Report be published (excluding the offending introductory message) and that the terms of reference of the Office of the Ombud be reviewed.

[207] The legal opinion was carefully crafted. However, its primary conclusion that the Report exceeded its mandate by discussing trends and grievances against the VC specifically may be open to some doubt. It is clear that the terms of reference had not envisaged a problem of this nature – multiple grievances against a Vice-Chancellor. The Report dealt with the problem by identifying a

“bullying trend” by the VC, based on anonymised data from unidentified individuals. It is difficult to understand how the Ombud could have avoided identifying the trend without naming the VC as the source of it.

[208] Be that as it may, the Panel considers that Council was justified in not publishing the full Report in light of Counsel’s opinion regarding the possible legal and reputational risk to UCT. But, it was not justified in ignoring the multiple allegations of bullying against the VC. This too, posed a risk to UCT. Council had a duty to act on the evidence before it.

[209] Instead, it elided the issue, and mandated the Chairperson and the (newly elected) Deputy Chair, Professor Shirley Zinn, (“Zinn”) “to continue to engage the VC regarding the issues raised through the 2019 performance review and the 360-degree review” regarding her “leadership style” and also her relationships with senior colleagues.

The Pityana-Zinn Report

[210] Following the 24 April 2020 Council decision, Pityana and Zinn met with the VC and each of the four members of Exco separately. The four members thereafter expected to receive feedback from them regarding potential solutions and a process to be undertaken to deal properly with the VC’s conduct.

[211] Instead, they were taken aback when the VC contacted them in mid-May, apparently at the request of Pityana and Zinn, to explain her perspective of the process envisaged by Council. This, she explained to them, involved their working with her to achieve her personal goals.

[212] The four members were troubled because, as explained in an email from Pityana and Zinn, referred to below, they again “*experienced the same pattern of behaviour (from her) that brought [them] to this situation.*”. In other words, they experienced the same hostility from her. They also felt that placing the onus on the VC to resolve this problem without feedback from them was unworkable.

[213] They, accordingly, wrote to Pityana and Zinn on 25 May 2020, and requested to meet them. They proposed, as a way forward, the following course of action:

- A meeting between Pityana, Zinn and the VC, DVC's and COO to address all relevant matters and agree on the interventions needed and the monitoring and evaluation system to be implemented.
- The VC should be offered a personal coach and/or mentor. An agreed feedback system should be instituted to create psychologically safe environment for honest feedback that holds the VC, the DVC's and the COO accountable for their conduct and for developing respectful interpersonal relationships. The coach should be available to all members of Exco.
- Council should appoint a senior coach to be present at all Exco meetings to identify problematic behaviour and find solutions.
- The Chairperson and Deputy Chairperson should schedule regular feedback sessions from Exco members individually and jointly and take full responsibility for this oversight.

[214] Pityana dismissed their proposal using strong language:

"...We...consider the letter and its tone to be totally inappropriate... Council...directed that we deal with the matter...[T]hat...[you]...dictate how we should undertake our work and what conclusions we should come to is most disrespectful and offensive.

There [is] an undertone in your letter that presumes this to be an inquiry into the conduct of the VC...[I]t is not...[It] seeks to appreciate the obviously strained relations amongst you. In our interactions with each one of you we asked...whether you believed the breakdown with the VC is irretrievable. You have all advised us, including the VC, that it is not. We've now requested the VC to engage you...in order to advise us how you think these relationships may be resolved. We will take this feedback into consideration in deciding how [to] proceed."

[215] Pityana and Zinn then prepared a draft report which was given to the parties for comment. This version of the Report apparently served before Council on a preliminary basis on 12 June 2020. The Panel has not seen this draft. But it appears to have incorporated allegations by the VC concerning a lack of loyalty

and insubordination by Exco, which Pityana and Zinn accepted. The passage indicating this reads:

“Notwithstanding the need for collegiality and support for each other; we are deeply concerned that the tendency of the DVCs and COO to club and caucus positions prior to management engagements may be divisive, unhealthy and potentially insubordinate. It erodes trust and makes it difficult to have open minded honest dialogues. It makes the position of any leader untenable. This is a serious threat to the authority of the VC and the effective leadership of the university.”.

[216] The “*clubbing and caucusing*” appears to have been a reference to their collective response to the Ombud’s Report. The four executives were, understandably, troubled by the suggestion that they had become a clique with no respect for the authority for the VC and Council.

[217] On 17 June 2020, they wrote to Pityana and Zinn in response to this statement. They disputed that their actions were insubordinate or defiant, or that their group effort in drafting responses regarding the Ombud’s Report or to Pityana and Zinn were “*clubbing and caucusing*” against the leadership of UCT. They met as a team, they insisted, to respond to the allegations in the Ombud’s Report “*in the best interests of UCT.*”.

[218] In respect of their discomfort with attending a meeting with Pityana and Zinn, convened by the VC, they explained:

“[O]ur email communication of 25 May 2020 directed to the Chairperson and Deputy Chairperson outlines our motivation for requesting an urgent feedback meeting between the Chairperson and Deputy Chairperson of Council with the DVC’s and COO. It was a reasonable expectation after the conversations that each member of the executive had with the Chairperson and Deputy Chairperson of Council that all of us would be given feedback as a group. Instead, we were told to meet with the VC to give us feedback. This created an unnecessarily difficult playing field on which to re-build relationships. Our joint letter to the Chairperson and Deputy Chairperson requesting the expected feedback prior to us meeting with the VC, does not amount to a defiance of authority of the VC nor the caucusing of opinions in opposition to the VC.”.

[219] Pityana and Zinn prepared a further version of the Report to Council, which served before it on 20 June 2020. That Report is dated 10 June 2020, and purports to be the a *“Fanal Report to Council (sic).”* It is attached as Annexure “J”. In summary it explained that their purpose was not to conduct an inquiry but to understand the risk posed by *“impaired relationships”* in Exco, and how this may be fixed.

[220] They found, without naming the source of their *“finding”*:

“[A] lack of understanding of some basic governance principles...a leadership style that places extensive reliance on...coercion...” (Including):

- *“Authoritarian leadership style that is about throwing around the weight of the Office*
- *Mistrust that is intended to exact a culture of pandering for endearment from those in power*
- *Mindless insecurity: an endless fear of attempts to be undermined, unseated from VC role or sabotaged*
- *Continuous burden to prove worthiness of role*
- *Abrasive behaviour*
- *Poor interpersonal skills and inability to build a cohesive team*
- *Non-collegial culture”.*

[221] They described this behaviour – attributable to the VC – as *“humiliating, demeaning, undermining, disrespectful and (euphemistically) not good for the personal health of all those affected.”* They added that the VC had received this *“candid feedback”* and had agreed to work with Council *“to restore relations of trust and mutual respect.”*

[222] They then turned to the VC’s complaint that she was *“countermanded and bullied”*, and that *“rude unprofessional language”* was used in formal meetings in her presence, despite her disapproval. She added that the executives were *“disloyal”* and showed a *“potentially insubordinate tendency for collective defiance.”*

[223] The reference to the use of unprofessional language was an allusion to Lange's use of expletives sometimes in meetings. Lange accepted the criticism. There was no suggestion that this was directed at the VC personally.

[224] In regard to the allegation of "disloyalty" and an "insubordinate tendency for collective defiance" the Report cited two events: Exco's response to the Ombud Report and the Pityana and Zinn invitation for "the VC to convene her colleagues to discuss the resolution of the challenges they experienced.". The Report boldly stated that "this behaviour persists" and cited the email exchange between them earlier to buttress this conclusion.

[225] Pityana and Zinn then made the following finding against the four Exco members:

"It is our considered view that the response from the four executives (Feris, Lange, Harrison and Morar) suggests that they have constituted themselves as a clique with no regard to authority, not only the VC, but also Council despite their protestations to the contrary. Their continued assertion of how, we on behalf of Council, should undertake our review and the arrogant prescription of what we should recommend to this august body, underscores that; as does their insistence on continuing to function as a clique.

To the extent that Council continues to have confidence in the leadership of the VC, we have neither found a reason why it should (not), nor has Council ever contemplated this. We have a duty to protect her office from such flagrant conduct that stands to undermine its effectiveness. Given their determination to continue conducting themselves in this manner, it is not unreasonable for the VC to institute appropriate measures to protect her office...

...By our inaction, we would be endorsing a conduct (sic!) that is capable of cascading down to other levels of management with uncontrollably destabilising consequences for the institution. We may reasonably be accused of making the VC to a lame duck (sic!); or worse still that we may be said to have reduced her to a black token leader."

[226] The tone and substance of this criticism was unwarranted. The stance that the four executives adopted in requesting Council to determine how it wished to

deal with the Ombud Report, before they made submissions, was sensible in the light of the incendiary atmosphere it had generated. The legal opinion to Council also confirmed this implicitly.

[227] The second example of insubordination given in the Pityana-Zinn Report – the reluctance of the four executives to attend a meeting, convened by the VC, with Pityana and Zinn – to discuss *“the dysfunctional executive”* was not persuasive. The email trail between them shows that the four executives were genuinely concerned that a meeting convened by the VC to deal with executive relationships would be counter-productive. This was evident from the VC’s hostility toward them and her pattern of behaviour, which the Pityana-Zinn Report itself had identified.

[228] They, therefore, suggested an alternative process, as outlined earlier. Moreover, the tone and content of the e-mails was neither impertinent nor insubordinate. On the contrary, they adopted a sensible approach and made sensible proposals. It is, therefore, regrettable that the Pityana-Zinn Report contains language accusing them of *“arrogantly prescribing”* recommendations to Council, which, it added, was indicative of *“their insistence”* to continuing to function as a clique. Even more unfortunate was their unjustified conclusion that if Council did not act against this *“clique”* it *“may be said to have reduced (the VC) to a black token leader.”*

[229] The Report concluded with an asinine recommendation that the four executives each sign agreements with the VC in which they commit personally *“to make these relationships work.”* They already had agreements with UCT and were bound by codes regulating their conduct.

[230] The drafts of these recommended agreements, which the Panel had sight of, were more in the nature of pledges of personal fealty to the VC, rather than agreements capable of being enforced in a university that values robust debate and contestation, not subordination and compliance. This recommendation was never implemented.

[231] The Pityana-Zinn Report served again before a Special Council Meeting on 26 June 2020. The minute records that the following decisions were made:

1. *“Council noted the report of the chair and deputy chair as recorded in the documentation of the meeting of 20 June 2020, and noted further that the status of this report was that of a report to Council by the chair and the deputy chair.*
2. *The issues that had precipitated the Report together with issues detailed in the Report were of serious concern.*
3. *Council’s role was that of an arbiter, especially where members of the university executive were in conflict, and a firm line had to be drawn for the full team i.e., each of the VC, DVCs and COO.*
4. *Council needed to establish a process by which the relationships between the parties concerned could be monitored, inclusive of a framework agreement to which each of the VC, DVCs and COO would be parties.*
5. *Arising from the above, there was general agreement that an external facilitator, to be appointed by Council, should work with the VC, DVCs and COO to develop a framework agreement to take forward a process that will seek to address the issues raised in the Report of the chair and deputy chair, and which will then assist the new Council to monitor the relationships of the executive staff concerned, and for which purpose the external members of Council and EXCO will receive regular updates.*
6. *The VC had previously had a 360-degree review, and this should be extended to the DVCs and COO as well.*
7. *Members of the executive management had themselves raised the option of a personal coach and this facility should be made available to each of them.”.*

[232] The new Council was appointed in July 2020. It appears to have attempted to implement part of the 26 June 2020 resolution to appoint an “external facilitator” to take this process forward. The Board of Practice (“BOP”) was appointed to fulfil this role. None of the other elements of the resolution were acted upon by the new Council.

Evaluation of the Pityana Council

[233] When Phakeng applied to be the VC at the beginning of 2018, Pityana and the Selection Committee were aware that there were serious concerns about her leadership. Not only was her unprofessional behaviour evident, but Price had cautioned Pityana against appointing her.

[234] The Committee was divided but ultimately yielded to Pityana's recommendation to appoint Phakeng after she gave assurances to improve her relationship with her colleagues. Pityana also persuaded the Committee that Phakeng had agreed to appoint a mentor or coach to assist her. And, he gave assurances that he would manage her closely.

[235] The commitments she made were "never honoured," as Pityana testified. Her unprofessional behaviour continued. Pityana observed that she abused her power by using her position to settle scores. The most troubling aspect of her leadership was the divisive way she used race and racial difference as a weapon in her interaction with almost everyone in UCT, regardless of their position. Her "crass" obsession with race, as Pityana described it, became worse, not better, with time. It became increasingly difficult for leaders and staff to attend meetings with her as she brooked no disagreement and caused distress to those affected.

[236] As Pityana and Budlender tried to rein her in, Phakeng was apparently convinced that there was a plot to remove her.

[237] These tensions burst into the open at the fateful Council meeting in June 2019, which led to the appointment of the Omar-Davids-Rousseau sub-committee. Ostensibly established to examine whether there were grounds for the VC's belief that there was a plot to remove her. It found none. It explored some of the underlying tensions giving rise to this belief but was hamstrung by what was clearly its true purpose, to smooth over the cracks in her leadership.

[238] Pityana and Budlender continued to receive complaints about the VC's behaviour, including from the Ombud, who reported confidentially on what she believed was a growing problem. By the end of 2019, her performance appraisal laid these problems bare.

[239] The next episode was the Ombud's Report. It must have been apparent then, if not much earlier, that the problems of her leadership reflected a persistent abuse of power. Council was correct not to adopt the Report, but it was not justified avoiding the evidence of the VC's abuse of power. Instead, it fixated on the Ombud's mandate and "executive relations."

[240] The Pityana-Zinn Report, which followed, was ill-conceived and poorly drafted, with one eye on Council's term coming to an end. Council ought to have rejected it. But once again, it misdirected itself, by appearing to adopt the proposals and then ignoring most of them.

[241] All of this begs the question, why Council, and Pityana in particular, failed to take more decisive steps to discipline the VC or terminate her contract. That Pityana had little confidence in her was evident from what he told the Panel:

"[T]here was enough in the two years to have given me a strong aversion to even considering her for a second term. As the Chairperson of Council, I would've told her that we did what we could to tolerate each other, maybe it's time to call it a day."

[242] The Panel considers that here were at probably two reasons for Pityana's failure to act more decisively against her: First, he was reluctant to act against a black female VC because he feared a backlash from her supporters and elsewhere. Budlender testified that he said as much to her. The reference in the Pityana-Zinn Report to the danger of having reduced the VC to a "black token leader" underlines this point further. The Ramugondo litigation against UCT and the racial tension it generated would also have weighed with him.

[243] Second, he adopted the view, probably within the first year of the VC's term, that the incoming Council should be saddled with this responsibility. As he also told the Panel:

"I think it would've been difficult to initiate a process of termination of the Vice-Chancellor's term at that point in our tenure not knowing who was going to come back to Council. Council was in the middle of a major transition and exiting Chief Executives in a confrontational way is a very difficult process. So, if you initiate it, you must see it through."

[244] This was not a good reason for him, or Council, to shirk their responsibility. They should have acted more decisively much earlier after the VC's appointment while evidence of her unprofessional behaviour was mounting. And, they ought to have acted on the legal advice regarding the Ombud's Report to initiate a process by a sub-committee of Council to investigate the allegations against the VC. The fact that this process may have straddled the terms of two Councils is no answer for the failure to act.

[245] But Pityana did more than avoid his personal responsibility in this regard. He drafted the Report, with Zinn, which acknowledged his "ineffectiveness" in "monitoring" the VC, and then shifted the blame to the other members of Exco – unjustifiably – for the situation in which Council found itself. This inevitably paved the way for the leadership crises that deepened thereafter. The Panel considers that Pityana and his Council neglected their fiduciary duty to UCT by failing to take reasonable steps to discipline the VC or terminate her contract.

The Ngonyama Council

[246] Once Pityana's tenure as Chairperson of Council had ended, the Ombud realised that Council would not act on the bullying complaints against the VC. She published the Report on UCT's website on 9 July 2020. *News 24*, an on-line news outlet, later published a prominent item featuring the Report. It referred to the confidential deliberations of previous Council meetings, the claims of bullying by the VC and the culture of fear among high ranking leaders at UCT.

[247] The new Council commenced formally in July 2020, and again had to confront this issue. At its first meeting, on 11 July 2020, 29 members were present:

Ms S Barsel, Cllr D Bryant, Mr M Campbell, Dr M Cardo, Mr S Chetty, Professor D Chirwa, Mr E Davids, Professor N Eccles, Ms P Gwangwa, Professor S Harrison, Mr W Kasibe, Ms Z Khanyile, Ms M le Roux, Mr S Lonzi, Mr N Mahlangu, Dr S Manjra, Ms K Maphisa, Ms N Mohamed, Ms T Mokgabudi, Dr R Morar, Associate Professor R Muloiwa, Ms S Mzimela, Ms B Ngonyama, Adv DB Ntsebeza SC, Professor N Ntusi, Professor M Phakeng (Vice-Chancellor), Mr J Rousseau, Professor C Vaughan, and Ms D Yach.

The Registrar was also present as usual, as were Feris and Lange, who were present by invitation.

[248] The election of the Chairperson and Deputy Chairperson was by secret ballot. Ngonyama was elected Chairperson with 16 votes for and 11 for Mr Davids, reflecting a division in Council. Ms Nazeema Mohamed was elected Deputy Chairperson. The new Council was given the responsibility to take the issue of the publication of the Ombud Report further with her.

[249] There was some continuity in the membership of the Pityana and Ngonyama Councils. Thirteen new members were appointed. They were:

Mr Samuel Chetty- PASS Staff (7-12)

Professor Danwood Chirwa - Senate

Professor Neil Eccles - Ministerial

Ms Pheladi Gwangwa - Ministerial

Ms Zama Khanyile - Appointments Committee

Ms Marlene le Roux - Convocation

Ms Kunyalala Maphisa - Ministerial

Dr Reno Morar - COO ex officio member (although he attended by invitation previously)

Professor Rudzani Muloiwa - Academic Staff

Ms Siza Mzimela - Ministerial

Adv DB Ntsebeza SC - Convocation

Professor Ntobeko Ntusi - Senate

Professor Christopher Vaughan - Convocation

[250] The new Council was hopelessly divided, from the beginning. Professor Chirwa's ("Chirwa") interpretation of this divide was:

"[T]hat there was one group in Council which wanted to have the VC investigated with removal as the end. The other wanted to prevent any form of

investigation or removal, opting for other interventions such as mediation, coaching and team building.”

[251] The source of the division lay in the frustration by some members of the previous Council that the VC’s improper conduct would not be investigated and the determination of most its new members, led by Ngonyama, to “move on” and ignore what had happened. Both believed that the path they were choosing was in UCT’s best interests.

[252] It was apparent that, directed by Ngonyama, at least half the members of Council were intent on adopting a different strategy in its relationship with the VC, which was to firmly support her. As Lange described the shift, they “were enthusiastic, almost obsequious” in their support for her.

The Ngonyama’s Council’s Approach to the Ombud Report

[253] On 14 July 2020, the Chairperson of Council issued a public statement to UCT criticising the Ombud for having published her Report on UCT’s website on 9 July 2020.

[254] On 20 July 2020, a Special Council Meeting was called. The primary concern, as recorded in the minute, was the media exposure of the Ombud’s Report, the leak of confidential information and the concomitant damage to the “issues of trust and institutional reputation” of UCT. The minute also records that “the issues raised by the Ombud...needed further attention.” It was agreed that the Chairperson issue a media statement, which “should show support for the Executive team and the Vice-Chancellor, affirming them as competent leaders.”

[255] For Council members who were aware of the criticism of both Phakeng and the Executive team in the Pityana-Zinn Report, agreeing to a media statement “affirming them as competent leaders” was disingenuous. It escaped them that issuing a statement that they themselves did not believe to be true would itself diminish trust in and the reputation of UCT, as subsequent events proved.

[256] On 3 August 2020, the Ombud met with the Chairperson and Deputy Chairperson to discuss the Report and its publication. But little progress was made.

[257] On 14 August 2020, the Chairperson wrote to the Ombud, referencing the meeting of 3 August 2020. In the main, she dealt with the personal difficulties between the Ombud and Phakeng, and proposed mediation by two external mediators.

[258] On 17 August 2020, the Ombud wrote to Council reiterating her view that Council was not willing to deal with the complaints against Phakeng. According to the Ombud, the Chairperson informed her that Council had agreed that the allegations against the VC would not be investigated, since this was “Reportedly not the time to point fingers”. The Ombud testified that:

“[T]he Chairperson impressed upon me the need for peace and moving on.”

And reiterated that:

“Once again this underlines the current and the previous Council’s desire to suppress the contents of my report, to blithely ignore the real pain of the 37 complainants to my office, and to see the issue as simply a matter of the relationship between the VC and the Ombud.”

[259] On 18 August 2020, the Chairperson wrote to Council. In her letter, she referred to the earlier meeting with the Ombud, and also commented on the letter of the Ombud to Council of 17 August 2020. She berated the Ombud for what she described as “a lack of accountability on the part of the office of the Ombud to Council. The Chairperson stated that the situation *“has reached a point now where the Council has to take a firm position on the matter”*, as Council *“cannot allow this situation to continue where the Ombud believes that she is above Council”*, describing it as a *“very dangerous precedent”*. She recommended that steps be taken to terminate the Ombud’s employment with UCT.

[260] At the Council meeting of 21 August 2020, the Chairperson reported *“that it had become clear that the Ombud was of the opinion that she enjoyed complete independence and that Council needed to take control and deal with the matter decisively.”*

[261] The Chairperson commented that the four remaining months of the Ombud’s contract would be difficult and suggested that the letter be written to the Ombud inviting her to nominate someone with whom Council could engage as part of

the hand-over process. The Chairperson also suggested that, given the extent to which relations had broken down, the Ombud be placed on leave pending her departure in December 2020.

[262] On 26 August 2020, Professor Pierre de Vos (“de Vos”), mandated by the Chair, met with the Ombud to discuss her work. The Ombud explained to De Vos that her obligation regarding confidentiality and independence precluded her from assisting him and Council any further.

[263] In another letter to Council dated 8 September 2020, the Ombud reiterated her criticism of the Chair’s handling of the matter.

[264] During September 2020, Council also obtained a legal opinion “*on the options available to it in dealing with the employment-related issues it faced regarding the Ombud.*” It provided 3 possible options regarding possible steps against the Ombud:

- Option 1: the institution of disciplinary action for, amongst others, the publication of the Ombud Report; leaking internal correspondence to the media; and bringing UCT’s name into disrepute;
- Option 2: releasing the Ombud from her obligation to report for duty; and
- Option 3: allowing the Ombud’s employment contract to expire by effluxion of time, on 31 December 2020.

[265] On 22 September 2020, Council met. A fourth option, proposed by Manjra and Rousseau, was put to Council. It proposed that given the breakdown of the relationship between the Chair, the Deputy Chairperson and the Ombud, that Council institute an independent process to investigate the Ombud Report and the Ombud’s behaviour, to fully understand the issues raised by the Ombud and to allow the Ombud to interact directly with Council.

[266] Thirteen members of Council voted in favour of option 1, one for option 2, six for option 4. Option 3 had no support.

[267] The Ombud learnt of the decision to institute disciplinary action against her the following day. She also received a letter from the Registrar, who wrote to her at the request of the Chair, inviting her to attend a meeting to discuss allegations

of misconduct against her on 25 September 2020. He informed her that UCT's HR ED will also be in attendance, and that the Ombud may have a colleague or union representative present to support her.

[268] On 24 September 2020, the Ombud responded, requesting further time to secure legal representation and to be provided with the particulars of the allegations against her.

[269] The Ombud was advised by the Chair, via the Registrar, that the matter would be dealt with in terms of UCT PASS staff conditions of service, which precludes the right to legal representation and that the purpose of the meeting was to discuss the Ombud's suspension, pending a planned investigation. The Ombud was also granted a postponement to Monday, 28 September 2020.

[270] The Ombud responded to the letter asserting that the unilateral change of status from Ombud to an ordinary PASS staff member, breached her employment agreement.

[271] On 28 September 2020, the Ombud and her legal representative appeared at the specified venue at 10h00. No one representing UCT was present.

[272] Instead, the Chairperson had a letter delivered to the Ombud via the Registrar, informing her that it is intended to suspend her pending the outcome of an investigation against her. It read:

"3. As a starting point, I need to clarify that the purpose of our meeting scheduled for Monday, 28 September 2020, was to advise you that:

3.1 UCT has become aware of allegations of misconduct against you and intends conducting an investigation into such allegations;

3.2 UCT proposes placing you on suspension pending the outcome of the investigation and any disciplinary hearing, that ensues as a result; and

3.3 you would be provided with an opportunity to make written representations on the proposal to place you on suspension.

4. For the sake of clarity, the allegations of misconduct against you which UCT intends investigating relate to the following:

- 4.1 *leaking of confidential information belonging to UCT. In relation to a News24 article of 18 September 2020;*
- 4.2 *bringing your employer's name into disrepute in circumstances where you were recorded in the above-mentioned News24 article making allegations that UCT is refusing to investigate allegations of bullying against the VC, Council is protecting the VC because she is a black woman, that Council is preferring the VC over the 37 people who have complained that the VC has bullied them, and that UCT is giving you silent treatment in relation to the allegations of bullying against the VC;*
- 4.3 *insolence towards myself as the Chairperson of Council and as your line manager is reflected in your letter of 8 September 2020;*
- 4.4 *insubordination and/or insolence towards myself as the Chairperson of Council in relation to the handover report emanating from my instruction, in a letter to you, dated 27 August 2020; and*
- 4.5 *refusal to engage with Prof. Pierre de Vos, as per my request - your refusal to meet with him for the purpose of assisting Council in finding ways of strengthening the reporting mechanisms of the Ombud's office in order to further improve the role of the Ombud at UCT."*

[273] The Ombud responded that she intended approaching the high court to prevent Council from suspending her or taking disciplinary action against her. Nothing further happened until the Ombud's term ended on 31 December 2020, when her term ended and she left UCT.

[274] In March 2021, the Ombud wrote to the Registrar and the COO, pointing out that the disciplinary matter against her never proceeded, and that her performance review was not done. She sought clarity on her position.

[275] The Registrar confirmed that there was no disciplinary proceeding and advised her that Council had given her a good performance award. On the finalisation of the disciplinary matter, the Registrar responded as follows:

"I confirm that no misconduct case and associated disciplinary action was followed through, and therefore as at the expiration of your contract date, this

being 31 December 2020, there is no record of the disciplinary process outcome in relation to you.”

[276] In the Panel’s view, the threatened disciplinary action against the Ombud was improper, i.e., to suppress the allegations of systematic bullying by the VC. It was also unlawful. This is so because the Ombud Report was published to expose the alleged abuse of power by the VC. It, therefore, constituted a “protected disclosure” within the meaning of the Protected Disclosures Act 26 of 2000. An opinion by Counsel confirming the position is attached as Annexure “K”.

The Board of Practice

[277] In the latter part of 2020 Ngonyama met with the Exco and the VC to once again deal with the problems in the executive team. According to Lange, Ngonyama was aware that the main issue was the VC’s behaviour, and not the conduct of the other members of Exco. Lange recalled that Ngonyama had pleaded with them to support the VC because of the damage to UCT if she failed. On one occasion Ngonyama also asked them to redouble their efforts to support her because the VC’s family told her that she was suicidal, which Phakeng confirmed in her testimony. They agreed to support her, Lange added, despite the VC’s increasing “*mistreatment and aggression.*”. Lange’s relationship with the VC deteriorated further during this period.

[278] To deal with the problem of “*executive dysfunction*”, Ngonyama contracted the BOP, a consultancy with whom she had worked as a business executive. It was initially envisaged that the process would last six months – September 2020 to May 2021 – and include individual and team diagnostics, team effectiveness workshops and individual coaching.

[279] The BOP team was led by Dr V Prozesky (“Prozesky”) and included three other members: Ms Ansomé Louw, Dr Ryk Croukamp and Mr Bongani Kamanga. In addition to having individual sessions with each member of the team, they held two workshops, one in Franschoek in November 2020 and the other at Spier in May 2021. Little progress was made at these workshops. A third one, planned

for November, was abandoned because BOP had not made sufficient progress building trust within the team.

[280] The Panel sought to understand whether the problems identified in the Executive were systemic – for example, whether there was confusion concerning roles and responsibilities – or individual i.e., related to the behaviour or conduct of any individual or individuals in the team. In regard to the latter, Prozesky's evidence was unhelpful because BOP was bound by the confidentiality of the process, and was, therefore, not able to disclose this information.

[281] It became manifest during this process that the VC was not only having difficulties with her Exco colleagues; her relationship with Ngonyama had also become strained. At the Spier meeting on 23 May 2021, Phakeng complained that her colleagues did not value her and that the Ngonyama was improperly interfering with her management of senior executives, who report to her. Their relationship also deteriorated in the ensuing period.

[282] In November 2021 BOP submitted a report to the VC as leader of the team on the process thus far. It appears that there was no follow-up action after this and early in 2022 the BOP initiative ended. This Report did not serve before Council, presumably because it was overtaken by events.

[283] When asked whether he believed (BOP's) intervention was successful Prozesky answered:

"[W]e completed the work. We gave each of the individual members of the Executive their reports, so they had their own reports. We gave the Chairperson of Council and the Vice-Chancellor the comprehensive report on all of them together as a team and what the outcomes of that was and what the consequences of that would be if not addressed. We committed to having the third workshop if we sort of wanted to conclude it all in one grand finale if you wish. How that was reported back to the Executive and how that was reported back to Council I was not privy to. So, as far as we went, that concluded the process and we left it to the Vice-Chancellor and the Chairperson of Council to if there were any follow up actions required that they would reach out to us".

[284] The members of the Executive Team, who testified, found the individual coaching sessions helpful but added that each of their relationships with the VC in fact deteriorated during this period. In their view the issue was not the executive relationships that were the problem, but the conduct of the VC. Lange testified that her coach – a member of the BOP team – told her confidentially towards the end of their contract that the point had been reached where either the VC or the rest of the team had to leave.

[285] Prozesky added, cautiously:

“[T]he general conclusion that I can give you is that of course the Vice-Chancellor had problematic relationships with each member of her Executive Team, but I think that was common knowledge even at the time.”

[286] The BOP appointment, was apparently a bona fide initiative by Ngonyama to solve the problem of executive dysfunction. It was destined to fail because it was premised on at least two flawed assumptions: First, that it could ignore what had transpired during the previous Council and particularly the disclosures in the Ombud’s Report regarding the VC’s alleged abuse of power, and second that the VC’s leadership problem could be overcome by coaching and team building – the same error of judgment that Pityana made.

Professor Loretta Feris Resigns

[287] Phakeng’s unprofessional treatment of Feris has been considered earlier and need not be repeated. Her relationship with her executive team – including Feris – deteriorated even further because of their difference of opinion as to how to manage the Ombud Report in 2020.

[288] After Ngonyama’s election as Chair, Feris experienced hostility from her too. Ngonyama shared Phakeng’s uncharitable view of Feris’ competence. This became apparent at a Council meeting on 17 October 2020.

[289] The matter before Council concerned a *“Report on Racism in the Health Sciences Faculty.”* The Dean of the Faculty presented an action plan to address the issues that had arisen, which he had prepared it with Feris.

[290] Feris testified that following the presentation the Chairperson said to her *“in a rather scathing tone that these incidents happened under my watch as DVC and that she believes that I lack urgency in respect of transformation.”*. Feris attempted to respond, but Ngonyama would not allow her to. Ngonyama relented only after several Council members intervened in Feris’ defence.

[291] Mahomed, who was then Deputy Chair, described Ngonyama’s reaction as an *“unfair attack or criticism”* of Feris. She responded by WhatsApp to Ngonyama at the time in these terms:

“I think you were quite harsh with Loretta – could have raised it differently – need to build a strong exec – Strong leaders.”

Ngonyama retorted:

“[O]ur transformation is a mess at UCT and we pay her a lot for doing what? I’m not happy.”

Mahomed disagreed with Ngonyama’s retort:

“Not a mess – lots of foundations have been set up that was not there before – it embarrassed her – you can take your issues up but maybe nuance your comment so it isn’t embarrassing.”

[292] Feris testified that:

“As matters unfolded towards the end of that year, I realised that (Ngonyama) was starting a narrative that I am not doing my job properly. This was in contrast to previous feedback from Council on the work of the transformation portfolio which recognised the challenges, but also acknowledged the positive strides towards change.”

[293] Against this background, on 1 November 2020, Phakeng conducted Feris’ annual performance review for the period 2019-2020. The review was conducted on the basis of agreed Key Performance Areas. Feris rated herself as “exceeds”, since she believed she had achieved more than what was required of her. Phakeng disagreed with her rating and reduced it to “meeting.” In other words, Phakeng believed that Feris had achieved what had been agreed upon, but no more.

[294] The review then served before RemCom, which was chaired by Ngonyama. RemCom lowered Phakeng's rating of Feris even further from "meeting" to "not meeting." Phakeng communicated RemCom's decision to Feris on 17 December 2020.

[295] Tainton, who was the HR service officer for RemCom testified that when Feris' performance review came up for discussion, the HR representatives were asked to leave the meeting. No record of the meeting was kept, which was a big concern for the HR Department led by Hoosain. Tainton explained it thus:

"Miriam and I had various discussions over the years, I mean starting with Prof Feris' ... we both thought there should at least be one person. If it's not – if they don't want Miriam there for example for me to be there just to record the accuracy of the minute...[F]rom a risk perspective, if you don't have HR there there's no one to advise on the risks of what's being discussed."

[296] Feris was taken aback by what RemCom had done. First, RemCom had no authority to amend the VC's performance rating of a DVC. In relation to DVC's, its authority is limited to the determination of remuneration packages. That is clear from RemCom's terms of reference attached as Annexure "L". Second, the adverse rating meant that Feris would not be eligible for the renewal of her contract since UCT's policy required a DVC to meet her performance targets; a "not meet" performance review would make her ineligible to renew her contract.

[297] Feris now had reason to believe that Ngonyama had intervened improperly in her performance appraisal to ensure that she was not eligible for reappointment.

[298] On 1 February 2021 she wrote to Ngonyama requesting confirmation of RemCom's decision to lower her rating; its mandate to do so; the reasons for the decision and the evidence upon which it was based.

[299] Phakeng – not Ngonyama – responded to Feris in writing later that day. She stated that she had shared her comments on Feris' performance with RemCom, and following RemCom's feedback she had changed her rating to "not meeting." One such comment by Phakeng – adverse in nature – which Feris was not aware of and had not been raised during her performance review was:

“DVC Feris had a lacklustre engagement with the university community on the Ministerial Task Team on the recruitment, progression and retention of black academics. She handed over the task to respond to the report to Prof Rob Morrel and could not even present the response to the leadership lekgotla. Even though I invited her to three engagements with black South African academics, she only attended one and, in that meeting, did not engage as DVC. This kind of attitude needs to change.”.

[300] In her testimony to the Panel – the first time she was given an opportunity to respond to this adverse comment – Feris refuted these allegations. Regarding the engagement with the Ministerial Task Team (“MTT”) she pointed out that:

“The MTT report fell in the scope of work of Prof Rob Morrell who reports to me. I tasked him with developing a UCT response to the report which we both presented at the LL meeting. He provided the overview and I led the discussion.”.

[301] She also firmly rebutted the allegation that she had only attended one of three engagements with black South African academics, in these terms:

“Following this [LL] meeting, the VC indicated to me that she intends to call separate meetings of black, Indian and coloured professors to hear their views on the Report. I agreed that getting the views are important but disagreed with the approach of setting up meetings according to apartheid racial identities. I told her that it ran counter to the UCT approach to anti-racism. She nevertheless scheduled these meetings. I was actually only invited to the “coloured meeting” and not the others. I did not engage as DVC as she indicated as this was a meeting hosted by her.”.

[302] Feris’ response was a complete answer to Phakeng’s adverse comment. Also apposite was her stinging criticism of Phakeng convening separate meetings on the basis of racial identity.

[303] Phakeng’s conduct regarding the change of Feris’ rating was duplicitous. When she provided her feed-back from RemCom to Feris, initially on 17 December 2020, she told her that RemCom had changed her rating. However, in her letter

to Feris on 1 February 2021, following Feris' letter to Ngonyama, she stated that *she* had changed the rating after receiving feedback from Council.

[304] Either way Feris was denied her right to fair administrative action because the decision to downgrade her rating was made without allowing her to answer to the adverse comment. Had she chosen to take this decision on review there is little doubt that she would have succeeded. Feris subsequently took legal advice and decided to terminate her contract rather than fight a protracted legal battle.

[305] On 9 February 2021, Feris, accompanied by her attorney, met with Ngonyama. They agreed on a staged exit for her. Further meetings were conducted between her attorney and Ngonyama where the terms of the NDA were finalised. Among the terms agreed was that her performance appraisal would be changed again to "meeting" so as to prevent prejudice to her future employment prospects. Also included was a sabbatical leave with full pay for the duration of her contract as DVC. The exit date was 1 April 2021. It was contained in a NDA.

[306] The VC was not party to these negotiations. When asked whether she was aware of the meeting on 9 February 2023, she indicated that she was unhappy that it took place without her knowledge and added that the Chairperson of Council was regularly usurping her authority as the line manager of DVC's and executive staff. This was her reaction to the question:

"The Chairperson of Council told me afterwards ... I have been waiting for us to get to a point where we talk about the Chair ...because this kind of behaviour – having meetings with the people who report to me, or giving them instructions...was very rife. And I didn't approve of it.... As CEO you can't just fire people just like that. And she – and that's why many of these departures were – she initiated them without my permission..."

[307] Feris was convinced that the Phakeng and Ngonyama had jointly orchestrated her departure. That seems unlikely because Phakeng's initial performance rating of Feris as "meeting" would not have automatically disqualified her from extending her contract. It is, however, clear from the evidence that Ngonyama wanted Feris to leave, and Phakeng grasped the opportunity by agreeing with

her to amend the performance rating to “not met.” There is little doubt that Phakeng was also keen to see the back of Feris, despite her reservations about Ngonyama’s role in the matter.

[308] In regard to the assertion that Feris had not performed as DVC the weight of the evidence was against this. It is clear that Feris was effectively pushed out without a proper case having been made against her regarding her performance.

Dr Russel Ally resigns

[309] Shortly after Feris’ departure, Ally, the ED of the Development and Alumni Department (“DAD”) took early retirement, in June 2021. He was a member of the senior executive team from August 2013 until he was “*forced to retire.*”. The reasons for his departure differ from other executive members, Feris’ and Lange’s (discussed next), who resigned after effectively being pushed out. Ally’s departure was the result of a breakdown in trust and a difference of opinion regarding the appointment of Professor Martin Hall as Acting DVC Transformation, following Feris’ departure instead of him. Ally believed he was the better candidate.

[310] Although Ally also had a rocky relationship with Phakeng from the beginning – she believed he was also one of “*Max’s boys*” – their relationship improved over time and she increasingly relied on his advice. They met frequently to discuss her concerns regarding her executive team. He assisted to mediate the problem by trying to get them to work better as a team, but was unsuccessful.

[311] With Feris’ impending departure Phakeng approached Ally to apply to act in her position as Acting DVC: Transformation. At the time the terms of Feris’ termination had not been concluded. He agreed to apply. The responsibility for making acting appointments to senior executive positions is the VC’s.

[312] However, before the matter went to Council, Phakeng informed him that Ngonyama had “*overruled*” her. Council appointed Hall. Ally’s name was not put forward to Council as an option.

[313] Ally subsequently asked Ngonyama to explain what happened. She denied that she had any role in the decision and said to him that it had been Phakeng’s

call. Faced with what he described as “two conflicting and contradictory accounts” he resigned. He explained it thus:

“Given what I considered ‘bad faith’ and duplicity, I indicated to both of them that it would be better therefore that I also submit a request for early retirement. Not only did I consider this a poor, ill-considered and potentially divisive decision (regardless of whether or not I was appointed), it also showed bad faith towards me and undermined whatever trust I believed there existed between the VC and myself. Under those circumstances I could no longer continue as a member of her executive team, be her de facto advisor, and it seriously compromised my position as head of advancement at UCT. As the head of advancement, it would be my role “to sell” this decision, defend replacing a woman of colour by a long-retired white male and accept that I was being overlooked for the role to our donors and alumni.

I felt that this would undermine my own integrity and that I would be party to a political decision that would inevitably divide the university community and set back the transformation agenda.”.

[314] Ally had two reasons for resigning: the “duplicity” of Phakeng and Ngonyama as to who or how this decision was made, and that the appointment of a “retired white male” would undermine the “transformation agenda..”.

[315] In regard to the first reason – Phakeng’s and Ngonyama’s “duplicity”— Phakeng confirmed in her evidence that the decision to recommend Hall, and exclude Ally was hers, but added that she had acted on Ngonyama’s advice. She explained that Ally was not an appropriate choice because he did not have the same academic standing of a professor, or the extensive experience that Hall had, in dealing with transformation related issues.

[316] Ngonyama had not known Hall, but enthusiastically embraced Phakeng’s view that he be appointed. She went further by persuading her to place only his name, and not Ally’s, before Council for consideration.

[317] In her testimony to the Panel, Phakeng confirmed that she had not been honest with Ally when she told him that Ngonyama had made the decision to exclude him. Ngonyama was also not forthright in explaining to him that her role in Hall’s

appointment went further than merely supporting Phakeng's view. Hall confirmed this.

[318] Hall testified that the Chairperson and Deputy Chairperson interviewed him for the position. Phakeng testified that he was "*horrified*" that he was subjected to an interview; he thought he was being invited to meet the Chairperson of Council and the meeting turned out to be something else entirely. He also found it odd, correctly so, that he was being interviewed by the Chairperson and Deputy Chairperson as the appointment of Acting DVC's is the responsibility of the VC, not of Council. The evidence indicates that Ngonyama and the Deputy Chairperson were not only closely involved in making this decision, but also did so outside the scope of their duties as Council members.

[319] The Chairperson and Deputy Chair's involvement in this matter was an example of what the Registrar referred to as a "*dilution of good governance*". This is because, as he explained to the Panel, they would have to make a decision about the appointment in a Council meeting, but would have made up their mind before the meeting because of their close involvement in the process. He explained:

"The Chairperson of Council should not have been involved in that at all. Stay in your governance lane, let the Vice-Chancellor do her job. And if you have a problem...with the recommendation that the Vice-Chancellor is making, we'll deal with that at Council, you vote her down and you tell the Vice-Chancellor, for these reasons, no, go back to the drawing board. Didn't happen."

[320] To conclude: Ally's view that appointing Hall instead of him was *per se* a setback for UCT's transformation agenda was misplaced. The reason given to the Panel for recommending Hall ahead of him – that he was a senior professor with considerable institutional experience in higher education and transformation – was sensible. However, it is also abundantly clear that both Phakeng and Ngonyama were not forthright with Ally.

[321] Phakeng, in particular, was untruthful in telling him that Ngonyama had made the decision to appoint Hall. The responsibility for Ally's departure therefore must be laid primarily at her door. The Chairperson of Council also bears responsibility for not disclosing the true facts to him. In addition, she and the

Deputy Chairperson ought not to have been involved in the process at all before the Council meeting. The mismanagement of this process resulted in Ally's loss of confidence in their leadership and his decision to leave. He too, signed an NDA.

A/Professor Lis Lange's resignation and subsequent developments

[322] At the beginning of 2020 Lange realised she needed help to manage her relationship with Phakeng. She sought the assistance of the HR ED, who recommended a coach. This is a service HR afforded to its senior executives. The focus of the support from Lange's coach was for her to learn to stand her ground against the VC's "*constant aggression*". Other members of UCT also used this facility to cope with Phakeng's abuse.

[323] Soon after Feris' termination, on 20 May 2021, at the BOP meeting at Spier, Ngonyama told Hall that she also intended to terminate Lange's position as DVC, prematurely, while beginning the process to renew the VC's term of office for a further five years. Hall explained the procedural requirements to her.

[324] Hall testified as follows:

"[S]he raised the topic there of what was going to be necessary to put matters right within the UCT Executive. And she specifically...mentioned...the unworkable relationship between the Vice-Chancellor and Lis Lange...Her view at that time was that Lis Lange would have to leave."

[325] It is a cruel irony that Ngonyama initiated this discussion, regarding the termination of Lange's contract, at a BOP meeting, where attempts were being made to improve Executive relationships. It would have been clear to Ngonyama too, that Phakeng – not Lange – was the aggressor in their relationship, as happened at a Council meeting on 4 December 2021: Lange presented her 2020 Report for Teaching and Learning, for which she was praised by several members of Council. This appeared to irritate Phakeng. When Lange responded to a question from a Council member regarding an issue in the Report – staff casualisation – Phakeng posted a message on the Exco WhatsApp group accusing Lange of being mischievous. She then

mocked her in the meeting. There was no reason for the VC's petulant response.

[326] On 5 December 2021, Ngonyama messaged Lange, apparently to sympathise with her, saying that the VC's response was unwarranted. Later that day she messaged Lange again to request a meeting the following day. However, Lange was unavailable, and the meeting did not take place.

[327] Shortly afterwards, Lange sought Hoosain's advice regarding the intolerable behaviour of the VC. She indicated that she thought of resigning, but could not afford to do so financially.

[328] On 6 December, Mr Ryk Croukamp, Lange's assigned BOP coach contacted her to lend support after what happened at the Council meeting. Lange testified that this was not the first time that BOP had been asked by Ngonyama to provide support following "*a bad engagement with the VC.*".

[329] Ngonyama wrote to Phakeng subsequently and reprimanded her for her behaviour:

"[I] want to draw your attention to the Council meeting on 4 December 2021, where you attacked Prof. Lis Lange in open forum. I have been informed that you do the same in other forums and I have no option but to instruct you to refrain from doing so to her or any other person in the institution. This behaviour is unacceptable and unbecoming of a person in your position".

[330] On 15 December 2021, Ngonyama contacted Hoosain to schedule a meeting with her in December, apparently to discuss the untenable situation between Phakeng and Lange. Hoosain was unavailable. The meeting was then arranged for 3 January 2022.

[331] On 20 December 2021, Ngonyama invited Harrison to dinner. Ngonyama asked her whether she intended renewing her contract as DVC for a second term. Harrison indicated, cautiously, that this discussion was premature as she had served less than 2 ½ years of her first term. Ngonyama, also mentioned that Lange would not be renewing her term.

[332] Harrison expressed surprise, as she knew that Lange wished to serve a second term, as did several of her other colleagues, including Moultrie and Rousseau. Ngonyama responded that the relationship between Lange and the VC had reached a point where one of them must go; as far as she was concerned, it would have to be Lange.

[333] On 30 December 2021, Ngonyama arranged to meet with Lange, also on 3 January 2022, shortly after her scheduled meeting with Hoosain.

[334] During the meeting with Hoosain on the 3 January 2022, Ngonyama raised her concerns about the VC and the breakdown of the trust relationship between the VC and the Executive. She added that the BOP initiative, including having had two coaches for the VC, had yielded no positive results. Hoosain suggested that the VC be persuaded to agree to therapy instead of coaching. Ngonyama said she would *“think about it”*. Nothing came of this.

[335] Ngonyama also raised her concern regarding the conflictual relationship between Lange and the VC. She mentioned that she planned to ask Lange to leave. Hoosain enquired whether the VC was aware of this plan. This is how she described it:

“I asked her, ‘is the VC aware of this’? And she said, ‘don’t worry about the VC’. So, I said, ‘no, I can’t not worry about the VC for two reasons, the one thing is the procedural angle, and the second is that I had...been punished previously in my own performance award because of the Russell Ally agreement’. I said, ‘the VC felt I had put forward a proposal for Russell to get more than what he deserved. And I don’t want her – to be doing anything without the VC knowing about it and agreeing to it’. And I checked that with her a couple of times and she told me the VC is aware of it.”

[336] Hoosain offered to broach the subject with Lange when they returned from leave, later in January, which Ngonyama acceded to. Ngonyama did not disclose to Hoosain that she was meeting Lange later that day.

The Meeting on 3 January 2022

[337] When Ngonyama met with Lange at midday, she told her that she should consider leaving. Lange was taken aback and upset by what she had heard.

[338] Soon after the meeting, Lange contacted her lawyer, Mr Haffegge, to seek his advice on how to protect her rights. He, astutely, advised her to record the conversation while it was fresh in her memory. She did so, and sent it to him the following day.

[339] Her contemporaneous note of the meeting, in the absence of any other evidence to the contrary, is strong indication of the accuracy and veracity of what transpired at this meeting. It is also supported by other evidence. Given its importance, it is quoted in full:

“On 03/01/22 I met with Babalwa Ngonyama, Chairperson of the UCT Council, at the President Hotel in Bantry Bay. The meeting took place for an hour approximately between 12.20 and 13.30.

The meeting was a follow up of a telephonic conversation initiated by BN on 05/12/21 after the UCT Council meeting of 4 December 2021. In her phone call BN wanted to know what was happening between the VC and I as the tension was palpable during the Council meeting.

The conversation on 03/01/22 started by BN indicating that she thought that the relationship between the VC and I had reached a point of no return. She indicated that if this was a marriage, this would be the year in which one reaches the divorce point.

The conversation moved between the short-term situation: 2022 as the last year of my first term in office, and the long-term situation: my desire to exercise the option to stand up for a second term as DVC as indicated in my contract.

In relation to the short-term BN indicated that she could not see how the VC and I will manage this year and that an open confrontation between the VC and myself would not be good for either of us. I asked whether she knew that the reason of the aggression from the VC was, as I know that I did nothing wrong at the Council meeting. She indicated that only the VC and I can explore that. She agreed, and indicated to have said as much to the VC, that nothing in my behaviour in Council on 4 December could have provoked the VC’s reactions during the meeting.

In relation to standing for a second term I mentioned that it was my hope and desire to have the opportunity to finish some of the projects I initiated in my portfolio. I indicated that I believe my performance during the last four years is such that I could be given a second term. BN indicated that it is unlikely that Council would support a second term of a DVC who is not supported by the VC. She asked whether I thought I was going to be effective in the portfolio given the tension with the VC.

At some point in the conversation, I said that the whole situation was becoming quite close to constructed dismissal (sic!) and that I thought it can become a legal matter for which I would like to seek advice.

She indicated that performance is not the only issue at stake in the second term and also indicated that if the VC were to say that she wants to use the end of my first term to replace me by an African DVC she will have the support of the university and Council to do so.

She also indicated that once it is clear that 2022 is my final year, I will become a lame duck in the position as people will be more preoccupied with the appointment of a new person.

I indicated to BN that I had two concerns in relation to the scenarios she was putting to me: 1) at the professional level my professional reputation is at stake, as accepting any of the scenarios will be tantamount to the VC firing me; plus, the fact that I have witnessed the continuous disparaging remarks the VC makes about people she pushed to resign. 2) At the financial level, being denied the opportunity of a second term prejudices me substantially. She asked whether if it was possible to deal with the second part of the equation, I would look at the first part differently.

In the end she indicated that the options to both finish my term and to apply for a second term were open to me.

I indicated that I will think about having a direct conversation with the VC about the tension that has emerged between us, and that I will also seek advice about the whole situation as she presented it to me and will come back to her.”.

[340] It is inexplicable that Ngonyama initiated a conversation with Lange regarding the premature termination of her contract: First, she had agreed earlier that Hoosain, the person who ordinarily deals with high level terminations, would raise the matter with Lange; Secondly, Ngonyama was not Lange's line-manager, and had no authority to initiate termination discussions with her – which she was well aware of; Thirdly, Ngonyama's implied threat that the VC could use Lange's race against her to push her out if she insisted on seeking a renewal of her contract was also unlawful – it unfairly discriminated against her on the ground of her race and violated her constitutional right to equality. These circumstances would have afforded strong grounds for Lange to have succeeded in a constructive dismissal case against UCT.

[341] The following day, on 4 January 2022, Hall met Ngonyama. She must have realised that she had committed a grave error by initiating the termination conversation with Lange the day before, as it had not gone as planned. What she said to Hall bore no resemblance to Lange's record of the meeting.

[342] Hall recalled that Ngonyama's version was that the purpose of the meeting was to consult Lange regarding the renewal of the VC's term for another five years. The meeting was supposedly part of the Chair's stakeholder consultation process, required by UCT. However, in Ngonyama's telling, as related at a Special Council Meeting on 6 October 2022, she said that Lange had "*hijacked the meeting*", was "*aggressive and combative*", and asserted an unwillingness to work with the VC for another term. Astonishingly, she also declared that Lange wished to be the Vice-Chancellor. Ngonyama told Lange that if this was her attitude, it would be difficult to continue her role as DVC.

[343] Hall understood from Ngonyama that Lange could no longer continue as DVC, and that she would step back and let Hoosain manage Lange's departure. He accepted Ngonyama's general version of the meeting, but pointedly told the Panel that he did not believe what Ngonyama had said about Lange wanting to be the VC. Lange was more forthright on this score:

"[O]nly somebody who is a total ignorant of higher education processes could have imagined that at the point of renewal of a Vice Chancellor there is a chance for anybody else but the Vice Chancellor in office to be renewed... [O]ne has to

be completely ignorant or stupid to actually put forward such a proposition...It never occurred in my wildest dreams to aspire to be the Vice Chancellor of UCT.”.

[344] Significantly, Ngonyama did not mention to Hall that she had met with Hoosain the day before. The reason is obvious: Hall had advised her seven months earlier on the procedure regarding the termination of a DVC’s contract. When Hall’s attention was drawn to this meeting with Hoosain during the hearing, he was taken aback, and his response was revealing:

“No, I wasn’t aware of it, and I’m disappointed to hear that because when I was helping the Chairperson prepare for answering the questions that have been asked by Senate, we had frequent conversations about this. And I pressed her constantly about what had actually happened [at] the meeting of the 3rd of January because I realised that the content of the – this is prior to Lis Lange’s letter...I realised that the content of that meeting is going to be absolutely critical to her credibility.”.

[345] Phakeng was on leave early in January 2002. She received a text message from Ngonyama asking her to call urgently regarding her meeting with Lange. She did not respond.

[346] On 27 January 2022, Hoosain met with Lange in a confidential, off the record discussion, as she had agreed to with Ngonyama on 3 January 2022. At this stage, Hoosain was unaware of Ngonyama’s meeting met with Lange on the 3rd. She testified that Lange was “*very angry*” and relayed what had happened at her meeting with Ngonyama. The disclosure of the meeting surprised Hoosain. She testified:

“I felt the Chairperson should have told me, and this is why I remembered. I thought she knew I was going to go and talk to Lis, but she didn’t tell me she met with Lis. So, I walked into a situation thinking I’m going to have a conversation of a particular nature and mitigate the risk to UCT. And then Lis says to me, ‘Chairperson of Council spoke to me, and she told me I must leave. She told me it’s pointless if I apply for the renewal, because I’m not going to get it’. You won’t – no one will get a renewal if the Vice-Chancellor doesn’t get along with them...”.

[347] After this meeting with Lange, Hoosain called Ngonyama. She was concerned about the potential risk to UCT and the possibility of a constructive dismissal case against it. She related to Ngonyama what Lange had told her. Tellingly, Ngonyama did not deny Lange's version, but suggested that Lange must have misunderstood her, and pleaded with Hoosain to:

"...talk to Lis and convince her that I didn't mean it like that."

[348] Hoosain undertook to try and smooth things over but insisted that she could not tell Lange what Ngonyama had meant to convey, nor influence what Lange had understood from the meeting.

[349] On 31 January 2022 Hoosain met with Lange again, and conveyed Ngonyama's message, hesitantly, because it made no sense to her. She asked Hoosain what the point of talking about what happened was because she didn't believe Ngonyama. Lange was angry and told Hoosain that she still wished to apply for a second term as DVC. After further discussion, Lange relented and asked Hoosain to advise on her options.

[350] Hoosain proposed that Lange vacates her position as DVC at the end of February 2022. Lange suggested that she be allowed to stay on until the end of March 2022.

[351] Early in February, Ngonyama met with Phakeng. They discussed Ngonyama's meeting with Lange on 3 January 2022. Phakeng testified that Ngonyama told her Lange had refused to support her for a second term, and suggested she could do a better job as VC. Phakeng believed what she was told but, again, took umbrage at Ngonyama having met with Lange without her knowledge. According to Phakeng, she had intended to meet with Lange in February 2022 to discuss her possible renewal for a second term as DVC, but did not do so because of this turn of events.

[352] During the following weeks in February, Hoosain and Lange had several conversations about the terms of Lange's departure.

[353] On 4 March 2022, Ngonyama made a WhatsApp call to Lange. Lange recalled that:

“Ngonyama explained that she was consulting me about the VC’s reappointment and wanted to hear my perspective. The conversation was brief. I told her what I thought were the VC’s strong points but also said that a new term for the VC must be predicated on a better relationship with the Executive. She asked me how things were going with me and the VC, and I told her that things were not good and that I was considering lodging a grievance...”

[354] Lange’s recollection of the date of this conversation must be correct, because Ngonyama also met with other members of Exco – Harrison, Morar and Pillay – the following day, on 5 March 2022 to solicit their views on the VC’s reappointment. Their stance – as they informed her – was that would support Phakeng if she were reappointed but could not endorse her reappointment.

[355] The importance of this evidence is that it exposes Ngonyama’s version that the purpose of her meeting with Lange on 3 January 2022 was to discuss Phakeng’s renewal, as untrue. Why, the Panel asks rhetorically, would Ngonyama have consulted one of Exco’s members – Lange, on 3 January – and the other members only two months later?

The NDA is concluded

[356] On Sunday, 13 March 2022, Hall sent the following WhatsApp message to Hoosain regarding the proposed agreement for Lange’s departure:

“Good evening, Miriam. Not sure if Babalwa has briefed you, but she’s asked me to help with the confidential settlement issue that you’re working on with her, given her role as RemCom (Chair). At Babalwa’s request I have a call set up with Mr Gavin Stansfield [UCT’s lawyer] this Tuesday. Can we talk before then...”

[357] On 14 March 2022, aware of terms of the draft agreement, Ngonyama wrote to Hoosain to confirm her approval:

“That’s fine. I just want you to look at the legal parts of the agreement, I’m still happy with the terms.”

[358] Hall, Stansfield, and Hoosain met on Tuesday morning, 15 March 2022, to finalise the terms of the NDA. Later that afternoon Hall enquired from Hoosain

about the status of the NDA, so that he could make it available to the VC for their scheduled meeting:

“Hi Miriam. How are you getting on? Will you be able to get the final version to me by about 5, so I can prep for my briefing of Kgethi at 5.30?”.

[359] Further WhatsApp communications between Hall and Hoosain later the same day, indicate that steps were taken to prevent any information regarding the NDA being leaked.

[360] Shortly after 19h00, on 15 March 2022, Hoosain sent the following WhatsApp message to Ngonyama (reproduced without amendment):

“hi Babalwa. Update on confidential matter – met with Martin yesterday and then with martin and Gavin this morning. Finalised all HR elements first then between Gavin and I completed final draft including detail on projects to be completed this afternoon. Sent final draft to Martin who was going to brief VC at 17h30 today as VC will present the item at RemCom. Have also now provided input to Margie⁴, on remcom papers for this matter. She will, as per normal process, send papers to yourself and Kgethi for signoff with 2 recommendations 1) that we take the item at 17 March 22 remcom meeting as a matter of urgency and 2) that we do not circulate papers ahead of the meeting. So a heads up to expect the papers. Trusting all is in order. Kind regards.”.

[361] At 19h45, that evening, Hall wrote to Hoosain:

“Hi, Miriam. We’ve been through the contract and Kgethi understands the timeline and the leave blocks, et cetera She’s hesitant about two things, the timing (should we wait until after her renewal is complete?) and the principle of payment of 1.6 given the poor performance issues...I’ve asked her to talk this through directly with Babalwa ahead of RemCom, which she will do this evening, if she can get through.”.

[362] On the morning of 17 March 2022, Hoosain sent the final version of the NDA to Lange via email and requested her to sign it. She did and emailed the signed version back at 15h18 on the same day.

- [363] At 16h30 on 17 March 2022, RemCom met via an online Teams Meeting. Amongst those present were the VC, Ngonyama, Gwangwa and two HR service officers, Tainton and Jacobs. The HR officers usually ensure that there is a record of the meeting. Hall also attended, but only for a presentation, and then left.
- [364] Amongst the items on the agenda, were two confidential matters, for the end of the meeting: the renewal of the VC's contract and the termination of Lange's contract, as if linked by an umbilical-chord. When these items came up for discussion the HR representatives were asked to leave. There was, therefore, no record of the discussion.
- [365] As pointed out in the Interim Report of the Panel, this was not only unprecedented, but wholly unnecessary, as the HR representatives were not conflicted and were also bound by confidentiality requirements. However, based on the evidence received after the Interim Report was published, it was unclear whether Lange's NDA was formally tabled at this meeting, as stated in the Interim Report. It is nonetheless beyond doubt that it was discussed, and it was clear to everybody at meeting that Lange's impending departure was a *fait accompli*, as Gwangwa conceded in her testimony.
- [366] It is also likely that Ngonyama, who had driven the process, wanted to secure the agreement with Lange before the Council meeting of 22 March 2022, but deliberately delayed the VC's signature so she would not have to disclose Lange's impending departure to Council. The reference to the "*timing issue*" in the days before Lange signed was the clearest indication that this was Ngonyama's plan.
- [367] The fact that the VC's reappointment was scheduled for consideration ahead of Lange's departure was of course, also odd. Lange had been appointed DVC in January 2018 and Phakeng as VC six months later, in July 2018. Logically, therefore, Lange's reappointment should have come up before Phakeng's. The fact that there was no information forthcoming about this issue also caused some members of the Senate, including Moultrie, to begin asking questions.

Ngonyama's plan unravels

[368] In advance of the Senate meeting on 22 March 2022, Ngonyama circulated a briefing note to Senate motivating Phakeng's reappointment for a second term. It affirmed that the consultation process she had conducted with stakeholders established that 90% of the respondents "*urged*" her confirmation for a second term. Ngonyama, refused to testify; so, her findings were not verified by the Panel.

[369] There were however glaring inaccuracies in the note. Regarding her consultation with the Executive the note read:

"All six Eds whom I consulted endorsed the Vice-Chancellor for a second term in office and were strongly positive in their support." (Emphasis added)

[370] Lange was one of Exco's members consulted on 4 March 2022. At the time her departure was being negotiated, inter alia, because of her intolerable relationship with the VC. Her version of the conversation has been quoted above. The content of the consultation with Harrison, Morar and the Registrar, is also referred to earlier. They made clear that they would work with the VC if she were granted a second term; but deliberately stopped short of endorsing her, much less being "*strongly positive in their support*". Kruger took a position similar to her Exco colleagues. The VC's behavior also was an important factor in Hoosain's departure.

The Senate Meeting: 22 March 2022

[371] At the Senate on-line meeting on 22 March 2022, Ngonyama retreated from the supposedly full-throated endorsement by the members of Exco in her note to Senate. The minute records that she said:

"While the challenges within the Executive team were known, ongoing work was being done to address the issues in this area and each member of the Executive had indicated that they remained committed to working with the Vice-Chancellor if she were appointed for a second term.

Where there were identified issues with the Vice-Chancellor's interpersonal relationships Ms Ngonyama, as the Vice-Chancellor's line manager, had and would continue to hold the Vice-Chancellor accountable for her part in these issues."

[372] This version was misleading. The terms of Lange's departure had all but been agreed. All that remained was the VC's signature, which it must be concluded had been withheld so as not to muddy the waters at the Senate meeting. Lange was clearly not "*committed to working with the Vice-Chancellor.*". And the other members of Exco were also not enthusiastic about her possible reappointment. Ngonyama failed to disclose her inappropriate involvement in, and the true facts regarding, Lange's impending departure. She also had a duty to correct the false information in her note regarding the stance adopted by the other Exco members. She withheld this information too.

[373] Regarding her assurance to hold the VC accountable for her interpersonal relationships there is a sense of *déjà vu*. Pityana had given similar assurances four years earlier, but the problem concerning Phakeng's "*interpersonal relationships*" had worsened. Barely two months before the Senate meeting, Ngonyama had written to Phakeng in preparation of her performance review on 1 February 2022. Regarding Phakeng's behavior Ngonyama appeared to have lost her patience with her:

"What remains of grave concern is that your behavior still reflects insolence, disrespect and lack of awareness of your impact on people and the situation. You also push back and treat me with disdain when I provide feedback from stakeholders. This remains unacceptable, I am no longer willing or able to tolerate this behavior."

[374] It is clear to us, therefore, that Ngonyama's assurances to Senate were aimed at mollifying its members; she could not have had a genuine belief after what she had personally observed and experienced that Phakeng would change her behavior.

[375] Most members of Senate, who were not privy to Bremner's daily issues, would not have been aware of the rot that had developed in the senior governance structures of UCT. They were none the wiser after Ngonyama's anodyne and misleading presentation.

[376] There is little surprise, therefore, that Senate voted to renew the VC's term. The vote was telling: 142 supported her. Only 31 opposed the renewal. Nine abstained.

- [377] On 28 March 2022, the VC and Lange met during one of their regular meetings. This was the first time she discussed Lange's impending departure with her. She told Lange that she was surprised by this turn of events, which Lange received with some skepticism. The VC added, sarcastically, that Lange's problem was that she could not accept that UCT could only have one VC. This was obviously a reference to what Ngonyama had told her about Lange's ambition to replace as VC. It is thus clear that Phakeng, who was not party to Ngonyama's initial plan to remove Lange, comfortably joined it. Their malign interest in wanting to push Lange out converged.
- [378] On 14 April 2022, Lange met with Ngonyama at her invitation for a "close-off" meeting. Lange was understandably cautious after what had transpired. She indicated that she was willing to continue serving UCT in the Centre for Higher Education Development.
- [379] On 19 April 2022, the VC announced Lange's departure at an Extended Executive meeting. Moultrie thought the timing of the announcement odd, and he surmised that the agreement must have been concluded before 19 April 2022.
- [380] Phakeng signed the NDA on 20 April 2022. Lange's departure date was 30 April 2022. On 3 May 2022, in a media release to UCT dated 2 May 2022, Phakeng announced that Lange "*will not be seeking renewal of her...DVC appointment...in January 2023.*".

The Commerce Faculty Board Meeting

- [381] Moultrie was not alone in questioning the circumstances of Lange's departure. On 4 May 2022, at a meeting of the Commerce Faculty Board, the VC was questioned about the reasons for Lange's departure. She answered that Lange's termination was voluntary, that she (the VC) had no role in this decision, and that she had signed the NDA a month after Lange had signed it. She explained that she was unable to say more because Lange's reasons were "*personal.*".
- [382] Phakeng was questioned at a Panel hearing why she had told the meeting that Lange's reasons for leaving were personal. She answered that she thought it

was mentioned in the NDA. The NDA, however, said nothing about the reasons for her decision to resign, much less that they were personal.

[383] During her testimony, Phakeng was constrained to accept this. When questioned why she did not tell the truth she answered that she could not possibly reveal this in a public gathering because of the potential repercussions.

[384] The VC's assertion that Lange was leaving voluntarily troubled Moultrie even more because it was at odds with what Lange had told him earlier – that she wished to apply for a 2nd term as DVC. If, as Phakeng said, she had signed the NDA on 20 April 2020, “a month after Lange”, it suggested that Lange did so before the Senate meeting of 22 March 2022. Moultrie's curiosity began a process that culminated in the appointment of an independent panel.

Special Council Meeting of 6 May 2022

[385] A Special Council Meeting was convened to consider the issue on 6 May 2022. Phakeng was present, as was the Deputy Chair, Gwangwa. The significance of this will become apparent in relation to the momentous meeting of 6 October 2022.

[386] The minute of the meeting on 6 May 2022 records that the Chairperson (Ngonyama) said she wished to “clarify” the time-line regarding Lange's departure because of “speculation and rumours” at UCT.

[387] In summary and shorn of the detail, Ngonyama said that:

- Early in March 2022 Lange approached her through HR about her intention not to pursue a second term as DVC;
- She re-directed Lange to the VC, as required by the policy;
- Lange initially proposed that she leave at the end of March 2022, but RemCom processes could only be completed at the beginning of April: hence her departure at the end of April; and
- On 14 April 2022 she met Lange to unpack the reasons for her decision to leave; Lange “repeatedly” stated that her reasons were personal; She respected this.

[388] None of this was true. Phakeng was aware that this version was untrue, as was Gwangwa. Subsequent events demonstrate this beyond any doubt. They, however, remained silent.

[389] The list of members present at the meeting were Ms Barsel, Mr Cambell, Dr Cardo, Prof. Chirwa, Mr Davids, Prof Eccles, Ms K Goqoza, Ms Gwangwa, Prof Harrison, Ms Z Khanyile, Ms Le Roux, Mr Lonzi, Dr Manjra, Ms Mohamed, Ms K Maphisa, Ms K Makholisa, Ms S Mtsi, Dr Morar, Prof Muloiwa, Ms Ngonyama (Chair), Prof Phakeng, Mr J Rousseau, and Ms Yach. The significance of this will also become clear later.

Senate Meeting 10 June 2022

[390] Moultrie and Professor Williamson (“Williamson”) tabled a motion at the Senate meeting of 10 June 2022, asking that Ngonyama answer questions at the following plenary meeting: whether *“the Chairperson of Council was aware of A/Prof Lange’s impending departure when she addressed the Special Senate Meeting on 22 March 2022 and if so whether she had consulted with DVC Lange and the VC to establish the reasons for DVC Lange’s departure.”*. And further *“whether the Chairperson (was) able to provide clarity on the reasons for the early resignation of A/Prof Lange from the position of DVC... and ...(knows) of any further instability in the senior leadership structures of UCT.”*. At this stage it had become known that Kruger, the ED of CMD, had been suspended on 11 May 2022, following the production of a souvenir brochure to honour Feris, which Phakeng disapproved of.

[391] At the same Senate meeting of 10 June 2022, Phakeng answered these questions as follows:

- She had approached Lange and asked her whether she wished to seek a second term as DVC; Lange indicated that she did not; and
- Lange also said repeatedly that her reasons were *‘confidential’* and *‘personal in nature’*.

[392] The VC’s statements to Senate were untruthful and contradicted her earlier version to the Commerce Faculty Meeting, and the account Ngonyama had provided to Council on 6 May 2022.

[393] It is common cause that the VC had not met Lange before 17 March 2022 to discuss the possibility of a second term. She confirmed this in an interview with a journalist on the television station ENCA on 1 March 2023 when she said the following:

“On the 17th of March and I know the date very well because I actually did not lie to the Faculty of Commerce, Faculty Board and to Senate. 17th of March I get an email from HR with a non-disclosure agreement signed by this person telling me that I must check it, I must sign, it’s going to RemCom and this person is leaving the end of March.”

[394] Phakeng also knew that Lange had been forced out by Ngonyama, and that her reasons for not seeking a second term were not personal in nature. Phakeng’s testimony in this regard was inconsistent and contradictory. When pressed during her testimony as to why she didn’t tell the truth to Senate regarding the actual reason for Lange’s departure, her answer was revealing and echoed her testimony regarding her failure to tell the truth at the Commerce Faculty Meeting:

“.. It would be like dropping a bomb in the meeting, so I preferred not to say that.”

[395] Ngonyama and Phakeng were now colluding regarding their versions on Lange’s termination. This involved hiding behind the confidentiality provisions of the NDA by suggesting that Lange’s reasons were personal and confidential.

[396] In response to the questions posed by Moultrie and Williamson at the Senate meeting of 10 June 2022 Ngonyama revealed her hand on 23 September 2022. She provided a written response to Senate for the Senate meeting scheduled for 30 September 2022. She stated that Lange had indicated that she did not want to be considered for a second term for reasons that were both personal and confidential; that Lange had submitted her proposal to Human Resources on 17 March 2022; and that, at the time when she addressed the Senate regarding the motivation for the renewal of the VC’s contract for a second term on 22 March 2022, *“the matter was still with Lange and the VC”*.

[397] As set out earlier regarding Phakeng's answers to Senate on 10 June 2022, Ngonyama's answers also contradicted what she had told Council on 6 May 2022. Lange had not indicated that she did not want to be considered for a second term. She was told by Ngonyama on 3 January 2022 that her contract would not be renewed; by 17 March 2022, the terms of the NDA had been finalised between Ngonyama and Phakeng and agreed to by Lange; the only outstanding aspect regarding the NDA on 22 March 2022 was the VC's signature, which was withheld deliberately, and not because of any outstanding negotiations between Lange and the VC.

[398] This deceit was exposed at the Senate meeting on 30 September 2022. Lange had become aware of Ngonyama's false account to Senate and felt compelled "to set the record straight". She emailed a letter addressed to the "Chairperson of Senate, the Chairperson of Council, the proposer of the 10 June Senate meeting (Moultrie), and the...Senate" on 29 September 2022. Harrison was the Acting-Chairperson of Senate, in the absence of the VC, who was on sabbatical leave. Harrison declined to place this letter on the Senate agenda as an item because it was submitted outside the 7-day notice period provided for in s 27(3) of the Institutional Statute. It provides that:

"Any two members of the senate may place a motion on the agenda for a meeting of the senate by giving notice to the registrar at least seven days before the date of the meeting, and the registrar must include any such motion in the agenda."

[399] Harrison wrote to Ngonyama to advise her accordingly.

The Senate Meeting of 30 September 2022.

[400] Harrison introduced the agenda item and opened it to the floor for discussion. Moultrie was the first hand raised and he proceeded to read Lange's letter. In summary it revealed that:

- The process that led to her stepping down was initiated by the Chairperson of Council. At no point was the VC, part of the conversation, except at the very end after she had already signed the NDA;

- Her first conversation with the Chairperson of Council about her future at UCT took place on 3 January 2022. During that conversation, Ngonyama conveyed to her that the relationship between Lange and the VC had broken down, and that her tenure could not go beyond 2022;
- Ngonyama had also indicated to her that, once it was known that she was stepping down, the remainder of her tenure would be ineffective and therefore she should cut it short;
- She had indicated to Ngonyama that it was her intention to stand for a second term to finish her work but, Ngonyama's response was that Council would not appoint a DVC against the VC's wishes, no matter how much support, she might have;
- She signed the NDA on 17 March 2022; and
- She had no personal reasons for stepping down from her position as DVC.

[401] The contents of this letter were explosive, with many in the meeting expressing *“shock and dismay at what was being reported and the implications this had for UCT.”* These included the possibility that both the VC and the Chairperson had misled Senate regarding the facts relevant to the VC's re-appointment and the circumstances of Lange's departure.

[402] Harrison considered whether to allow further discussion on the letter as it had not formally been placed on the agenda. She decided that the discussion should proceed. In a report prepared following the meeting she explained her rationale thus:

“My judgment call, as acting chair of Senate on Prof Moultrie reading the letter was that stifling Senate in a manner that required them to overthrow my chairing with the same information finally being tabled would not be of benefit to anyone, nor would it allow a measured discussion to follow. Prof Moultrie read the letter and discussion ensued. The focus of the discussion was on understanding the nature of Assoc Prof Lis Lange's exit and understanding the stability and functioning of the executive leadership of UCT. Both topics are relevant to the academic project of UCT and therefore are relevant to Senate as the apex academic structure of UCT.

Hence as Chairperson of the 30 September 2022 Senate meeting, I confirm that I followed all the relevant rules and meeting procedures specified for Senate fully. In chairing the Senate meeting, I believe that I ensured that members of Senate had equal opportunity to engage openly with the Senate agenda items as is befitting of a well-functioning apex academic governance structure at a university.”.

- [403] A view was expressed that Senate had no power to delve into questions involving employee relations or investigate the conduct of the Chair. It garnered little support, and was wrong. Senate is the apex academic governance structure. Section 22(3)(c) of the Institutional Statute gives it the authority to make recommendations to Council *“on any other matter affecting UCT as it considers necessary.”*. As noted earlier this power is an important check and balance of Council’s authority to govern UCT. It was properly invoked by members who were troubled by the turn of events.
- [404] An overwhelming majority of 153 members voted to constitute a sub-committee consisting of ten elected members to investigate all aspects of this issue. Only six opposed the motion and abstained. Moultrie, fittingly, received the highest number of votes to serve on the sub-committee.
- [405] Ngonyama did not attend the Senate meeting on 30 September 2022, and was alarmed when she became aware of this turn of events. On 3 October 2022, she addressed a letter to the Acting Chairperson of Senate and members of Senate to try to contain the fall-out.
- [406] First, she acknowledged that there were *“two conflicting versions”* from Lange and herself. But added that *“there is a different version to what has been tabled to-date, which..., shall be fully ventilated in due course in the appropriate forum.”* As became apparent from what happened at Special Council meeting on 6 October 2022, she had another false version in mind. Second, she asserted that she *“stood by her written response to Senate, which (she added) was an accurate account provided in the context of strict requirements for confidentiality in HR processes...”*. This Orwellian response made no sense either.

[407] Third, she complained that Senate had acted un-procedurally by considering Lange's letter, which had not been placed on the Senate agenda more than 7 days before the meeting, that Moultrie had irregularly communicated directly with Lange during the meeting and that this was "*an attack of the integrity of the Office of the Chair.*".

[408] Harrison's explanation for having allowed a discussion of Lange's letter, was a complete answer to this procedural objection. She reasoned that it was not a new matter on the agenda that required 7 days' notice and was pertinent to the matter on the agenda pertaining to the Chair's report to Senate. She, therefore, had no valid ground to stop Moultrie from presenting the letter. She was correct to have done so.

[409] At about this time, Ngonyama was also trying to find support for the false version she was about to present to Council on 6 October 2022. She called Hoosain, whose testimony before the Panel was compelling. She recalled Ngonyama's call to her thus:

"The Chairperson called me and said to me, 'do you remember that you approached Lis about leaving? And that [she] had left for personal reasons, but Lis is now saying that she hadn't'. And I said, 'no, let me remind you how all of this happened. You called me to a meeting on the 3rd of January. This is what you asked me to initiate. I've been engaging' – because she even said that the agreement – something about the agreement was only signed on this date after the Senate meeting by the VC. So, I said to her, 'but we never just have an agreement. It doesn't fall out of the air. It's a process. You and I started this. I was mandated by you to do all of this up until this point. So, how could you even say?' I think she had said to Senate that it only came to light later or something to that effect. So, in that conversation she was – when I reminded her that this is the – what the process was about, she also said to me, 'but you know. I told you that Lis wanted to become the next Vice-Chancellor when we met on the 3rd of Jan. So, I said, 'no, you never told me that. I have never ever heard that."

[410] Undeterred, Ngonyama proceeded to the next Council meeting.

Special Council Meeting of 6 October 2022

[411] The developments in Senate on 30 September 2022 required a Special Council Meeting on 6 October 2022. The stakes for Ngonyama and Phakeng could not have been higher. From their perspective two things had to be achieved at this meeting: present the false version regarding Lange's departure that Ngonyama had alluded to in her letter to Senate, and prevent an independent inquiry from investigating these events, which had been mooted by some Council members. The instrument to carry out the plan was the Deputy Chairperson of Council, Gwangwa.

[412] There were 29 members present at the meeting were: Ms S Barsel, Mr M Campbell, Dr M Cardo, Mr S Chetty, Professor D Chirwa, Mr E Davids, Professor N Eccles, Ms K Goqoza, Ms P Gwangwa (Deputy Chair), Ms Z Khanyile, Ms M le Roux, Mr S Lonzi, Dr L Lushaba, Ms K Makhohliso, Dr S Manjra, Ms K Maphisa, Ms N Mohamed Ms T Mokgabudi, Ms B Mtsi, Ms S Mzimela, Dr R Morar, Professor R Muloiwa, Ms B Ngonyama (Chair), Professor N Ntusi, Professor M Phakeng (Vice-Chancellor), Professor E Ramugondo, Mr J Rousseau, Mr G van Onselen and Ms D Yach.

[413] The seven underlined names were not present at the meeting of 6 May 2022, discussed earlier. The significance of this will also become apparent later.

[414] Before the meeting Gwangwa lobbied Chirwa, who testified to the Panel. He was a credible witness and is a thoughtful academic.

[415] According to Chirwa, Gwangwa outlined her plan, which required him to vote against the proposal for an independent panel and support the alternative proposal, in support of Phakeng and Ngonyama. This was that Council convene a sub-committee to *"look into some concerning governance and procedural matters relating to the Senate meeting of 30 September 2020."* The purpose was to deflect the focus on whether Phakeng and Ngonyama had misled Council regarding the circumstances of Lange's departure and place the emphasis instead on the alleged procedural irregularities at the Senate meeting, which had no merit.

[416] Chirwa refused to go along with the plan and told Gwangwa that he would vote according to his conscience, which he subsequently did. Chirwa testified that Gwangwa *"orchestrated"* what subsequently happened in the meeting. He said

it was clear from what transpired that she had lobbied others who were happy to support the plan.

[417] It would have been clear to Gwangwa, Ngonyama and Phakeng that they may not have the numbers to secure a majority for their position in the meeting. The meeting proceeded online. Ngonyama recused herself because of her conflict of interest, but astonishingly, remained and participated in the meeting, despite her conflict. Phakeng disclosed no conflict of interest even though she clearly was conflicted. Gwangwa took over as chair of the meeting.

[418] She was also conflicted as she had personal knowledge of some of the circumstances – if not all – regarding Lange’s departure from the RemCom meeting on 17 March 2022. In particular, she testified that she became aware of Lange’s *“impending departure”* at the meeting. If, however, it was unclear whether she was in fact conflicted, her conduct before, during and after the meeting revealed that she was.

[419] The minute of the meeting shows that Gwangwa first called on Ngonyama to provide context for having convened the Special Meeting. Ngonyama repeated her view that Senate had irregularly considered Lange’s letter to Senate. She added that members of Senate had defamed her during the discussion and that the sub-committee elected to investigate the matter lacked objectivity.

[420] Next, Gwangwa called on Phakeng to present the report of the Senate meeting of 30 September 2022. This was irregular because Phakeng had not been present at the meeting. It had been chaired by Harrison, who was Acting-VC. Phakeng was on leave during September 2022. She insisted on presenting the report to Council, despite Harrison’s objections. The Registrar testified that it was improper for the VC to present the report having been absent from the meeting.

[421] Following the discussion two motions were placed before Council. The first, proposed by Rousseau and seconded by Le Roux was for Council to establish an independent panel to discuss the issues that had arisen at the Senate meeting. The second motion, proposed by the recently appointed Council member Dr L Lushaba (“Lushaba”), was seconded by Ms Goqoza, and then amended by Mr Lonzi and seconded by Ms Makholiso. This resolution was for

an ad-hoc sub-committee of Council to be appointed *“to seek clarity on the matter of the proceedings of the 30 September 2022 Senate meeting.”*

[422] 28 members present voted. The vote was split equally, 14 votes for each motion. The members who were recorded to have voted were Chetty, Barsel, Campbell, Cardo, Davids, Le Roux, Manjra, Mohamed, Morar, Ntusi, Rousseau, Van Onselen and Yach, Eccles, Goqoza, Gwangwa, Khanyile, Lonzi, Lushaba, Mokgabudi, Makholiso, Maphisa, Mtsi, Mzimela, Muloiwa, Ramugondo, Phakeng and Ngonyama. Chirwa’s vote was received after the cut-off time and was thus excluded.

[423] Gwangwa exercised a casting vote, thus carrying the second vote. It emerged that among those who voted for the second motion, which is scarcely believable given their conflicts of interest, were Ngonyama and Phakeng. It was not immediately apparent that they had voted because the votes were recorded on-line.

[424] The drama was not over. A Council member then asked whether Ngonyama had voted, and the Registrar confirmed that she had. The minute then records that:

“Several members noted that this was irregular as she was an interested party in the matter and was therefore not eligible to participate in the vote. One member asked that Council seek an external legal opinion before finalising the matter while other members argued that the motion did not implicate the Chairperson of Council by name, and if the Chairperson was conflicted so too were other members of Council who were also Senate members or who had attended the Senate meeting as Council member representatives of Senate.”

[425] Gwangwa then adjourned the meeting, before delivering what can only be described as an asinine ruling, which was recorded in the minute as follows:

“She ruled that Ms Ngonyama was not conflicted because the motion was not about the Chairperson of Council and if members of Council were of the view that Ms Ngonyama was conflicted it would mean that members of the Council who were members of the Senate were also conflicted. Her ruling was that Council had to proceed with the outcome of the ballot.”

[426] Some members were deeply troubled by this ruling. The minute records what happened:

"Ms T Mokgabudi, who was also the Chairperson of UCT Audit and Risk Committee expressed the view that Ms Ngonyama should have recused herself from the ballot.

The Registrar advised Council further that it needed to take two factors into account, and that each of these factors would be a matter of Council's record.

(1) Ms Ngonyama had at the start of the meeting recused herself from the role of Chairperson of the meeting on grounds that she was an interested party in the matter before Council. (2) The Chairperson of UCT Audit and Risk Committee ("UARC") was also on record in the meeting that Ms Ngonyama, having recused herself from the role of Chairperson because she had an interest in the matter, should not have participated in the ballot. The Registrar also pointed out that the motion voted for would see the Chairperson of the UARC as member of the ad hoc committee where she had also expressed a view that Ms Ngonyama should not have voted in the process to establish such a committee.

Professor Chirwa, Ms Mohamed, Mr van Onselen, Dr Manjra, Mr Davids, and Dr Cardo indicated that they did not support the ruling of the Deputy Chairperson and asked that this be recorded."

[427] Gwangwa was clearly on a mission to secure her pre-planned outcome and refused to reconsider her ruling in light of this advice, particularly from the Chairperson of the UARC. She then asked Ngonyama to give her version of the events of 3 January 2022. It was now clear that this too had been planned before the meeting, which was foreshadowed in Ngonyama's letter to Senate on 3 October 2022. There was no purpose for Council hearing a one-sided version of what had happened: the votes had been counted and the resolution supporting the second resolution passed, albeit irregularly.

[428] Ngonyama presented her full version, which was recorded in the minute:

"She was obliged to conduct confidential and informal consultations with a broad range of stakeholders as part of the process of the renewal of the contract

of the incumbent Vice-Chancellor. She started this process in December 2021 and engaged individually with Executives amongst other constituencies. Her meeting with Associate Professor Lange on 3 January was a consultation about the contract renewal of the Vice-Chancellor. Contract renewals of Deputy Vice-Chancellors were covered by separate HR policies in which the Chairperson of Council had no direct role and the renewal of a Deputy Vice-Chancellor contract had to be initiated by the Vice-Chancellor. She noted that Associate Professor Lange became abrasive, aggressive and abusive and had expressed her ambition to succeed Professor Phakeng as Vice-Chancellor. She said that she (the Chairperson of Council) had made her view clear that this level of conflict between senior executives of UCT could not be tolerated...The meeting degenerated...became toxic and was ended because of this.

She said she reported the engagement to both the Vice-Chancellor and the Human Resources Department (HR). The ED had then engaged with...Lange in a confidential discussion with the objective of resolving the issues between the [VC] and [Lange]...[A] voluntary path of separation was agreed upon HR ensured that [Lange] had access to legal representation throughout, which UCT paid for. When she addressed the Senate on 22 March 2022 the matter was still being finalised amongst [Lange], the [VC] and HR, she had not been briefed by the [VC] whether [Lange] would be seeking renewal of her term of office and the matter was only brought to her as Chairperson of RemCom in early April."

[429] Four misrepresentations are underlined: First, the consultation with Lange regarding the renewal of the VC's contract took place on 4 March 2022, and the consultation with Harrison, Morar and the Registrar on 5 March 2022. (It will be recalled that Ngonyama's meeting with Harrison on 15 December 2021 did not discuss the renewal of the VC's contract.) During this period, she also had a WhatsApp call with Kruger. The meeting of 3 January between Lange and Ngonyama was not concerned with the VC's renewal. Second, Lange was taken aback by the meeting, was not abusive and did not mention her wish to become the VC. Third, the interactions between HR and Lange in the period she signed the agreement were aimed at securing the termination of her term as DVC prematurely, not resolving any issue between the VC and Lange. Fourth, when she briefed Senate on 22 March 2022. she had seen the signed

agreement on 17 March 2022 – not in early April – at the RemCom meeting and was aware of Lange’s impending departure.

[430] Gwangwa then asked Ngonyama why this version was being given to Council at this meeting for the first time. She answered, again untruthfully, that *“the matter was dealt with by HR, and that she wanted HR to resolve the issues between the [VC] and [Lange].”*

[431] Ngonyama overlooked the Council meeting of 6 May 2022, where she had given a different version. Gwangwa was also present at that meeting; was probably aware that this answer was untruthful; and was also aware that the matter had been brought to RemCom on 17 March 2022, and not in April. Yet, she remained silent, and did not correct this untruth, as it was her duty to, as the Chairperson of the meeting. The inference that she was complicit in this subterfuge is irresistible.

[432] Seven members of Council, who voted for the second resolution, apart from Ngonyama, Phakeng and Gwangwa, had also been present at the Council meeting on 6 May 2022. They were Eccles, Goqoza, Khanyile Lonzi, Maphisa, Makholisa, and Muloiwa. These members were probably also aware that the version Ngonyama provided then differed materially from her version now, on 6 October 2022.

[433] What followed was an inconsequential discussion and the meeting ended with Gwangwa undertaking to work with the Registrar to write a Council statement to inform UCT of the decision of the meeting.

[434] Gwangwa later phoned the Registrar saying she wished to release a statement regarding the outcome of the meeting to the UCT community on its media platform. He was unable to deal with it because he was exhausted and advised her accordingly. She nevertheless proceeded to issue the media statement at 23h00, without his concurrence, and despite her undertaking to Council that she would work with him to produce the statement. The content of the statement revealed why she had proceeded without the Registrar’s concurrence.

[435] The statement read as follows:

"I write to provide feedback on the outcome of UCT of Cape Town (UCT) Special Council Meeting held on Thursday, 6 October 2022.

This urgent meeting was convened to review what transpired at the most recent Senate meeting, which took place on 30 September 2022.

At the Council meeting, the relevant members of the executive provided an update on what transpired, followed by robust discussions among members. I must commend Council members for carrying out such a difficult discussion in the most cordial way, and applying their minds to finding resolutions that are in the best interest of the university.

Following the discussions, Council resolved to constitute a sub-committee that will look into some concerning governance and procedural matters relating to the Senate meeting of 30 September. This committee will review the matter further and then advise Council on a way forward.

Council arrived at the decision to constitute a sub-committee through a vote. It is important to state that all members of Council, including those who also serve as Senate members, voted on this matter.

The Chairperson of Council provided her version of events on what transpired at a meeting between herself and Associate Professor Lis Lange.

As part of her responsibilities when a Vice-Chancellor becomes eligible for a further term of office, the Chairperson of Council is obliged to hold confidential and informal consultations with a broad range of stakeholders. She started this process of consultation in December 2021, engaging individually with each member of the executive team, among other constituencies.

Her meeting with Associate Professor Lange on 3 January 2022 was for the Vice-Chancellor consultation process. Contract renewals for Deputy Vice-Chancellors are covered by a separate Human Resources (HR) policy, in which the Chairperson of Council has no direct role. In terms of the relevant HR policy, the potential renewal of the contract of a Deputy Vice-Chancellor must be initiated by the Vice-Chancellor.

She met with Associate Professor Lange as a continuation of her informal and confidential engagement with stakeholders of the university on the re-appointment of the Vice-Chancellor. During this meeting, when she informed Associate Professor Lange about the possibility that the Vice-Chancellor's term of office would be renewed, Associate Professor Lis Lange became abrasive, aggressive and abusive, making clear her own ambition to succeed Professor Phakeng as the Vice-Chancellor.

The Chairperson communicated to her that she cannot support this.

Following discussion by Council members, there was consensus on how this matter should be handled. It will be taken further through the sub-committee to be constituted.

Council also received an update on changes in the senior leadership at UCT. This item will be discussed further at the next Council meeting". (Emphasis added).

[436] Significantly, the statement did not mention an important part of Ngonyama's version – that the NDA was brought to her in April – which Gwangwa knew was false. It seems clear that the true purpose of this message was to release Ngonyama's false version to the UCT community, rather than report on the outcomes of the Council meeting. That it was done with ill-haste and without the Registrar's concurrence lends credence to this. The statement also suggests that there was consensus in Council as to how the matter should proceed when there clearly was not.

[437] The importance of the Registrar approving media releases following the Council meeting is an important safeguard against inaccuracies or any other matter that may place UCT at risk. In this instance Gwangwa issued the false statement, and opened UCT to the risk of litigation by Lange for the defamatory statement against her and the breach of the clauses 7.2 and 7.3 of the NDA. They provide:

"7.2 The parties will co-operate to draft all appropriate press releases and other public announcements relating to the subject matter of this Agreement, the relationship between the parties and/or in respect of A/Prof Lange's commencement of leave and not wishing to renew her DVC appointment.

7.3 Neither party will issue any press release or public announcement regarding this Agreement, without the other party's consent, unless specifically permitted under this Agreement or required by law.”.

[438] Gwangwa was aware of the terms of the NDA, having seen it in her capacity as a member of RemCom. In his evidence the Registrar correctly stated that the publication of this statement represented a governance failure.

[439] In addition, Gwangwa ought to have recused herself from the meeting. She was aware of some of the circumstances pertaining to the conclusion of the NDA. She was clearly conflicted. In addition, her conduct in trying to “orchestrate” the outcome of the meeting as Chirwa explained, during the meeting in the partisan way she managed it and made rulings, and the circumstances under which she published the media statement reveals actual bias on her part.

[440] On Friday, 7 October 2022, 13 members of the UCT Council released a statement calling Gwangwa’s conduct during the meeting into question. The statement read:

“Statement issued by concerned members of the UCT Council 7 October 2022

‘We, the undersigned, wish to place on record our concern with events that transpired at a Special Meeting of the University of Cape Town (UCT) Council on 6 October. In particular, we seek to dissociate ourselves publicly from a decision of Council that was based on a flawed voting process, and which is unlikely to stand up to legal scrutiny. In taking the unusual step of releasing this dissenting statement, we are guided solely by our fiduciary responsibility to uphold the integrity of the institution, as well as the duty of care we owe to the broader university community. The proceedings of the Senate meeting of 30 September, which were widely reported on in the press, raised issues of grave concern around good governance, past and pending exits of several senior executives, and the proper functioning of Council in the execution of its mandate. During the Senate meeting, several allegations were made about the conduct of the Chairperson of Council in the chain of events that led to Associate Professor Lis Lange's departure from her position as Deputy Vice Chancellor: Teaching and Learning. The circumstances surrounding Prof

Lange's departure remain a matter of dispute, the subject of conflicting versions. As the highest decision-making authority of the university, it behoves Council to get to the bottom of these matters – to address them with the utmost seriousness and resolve – in a manner that promotes the dignity of the institution. Many of these governance issues have been festering since before the fallout from the departure of the former UCT Ombud, Zetu Makamandela-Mguqulwa. For this reason, a number of the signatories to this letter have repeatedly requested – over a period of several months – for a Special Meeting of Council to be convened, at which these and other pressing concerns would be fully ventilated. These requests have been systematically thwarted. At the Special Meeting of Council on 6 October, which was called by the Chairperson of Council, the signatories to this statement supported a motion to establish an independent panel, headed by a retired judge or someone of similar stature, to probe the allegations and concerns raised by members of Senate at the meeting held on 30 September, as well as the broader issues listed above. Some 14 Council members (of the 28 who cast their ballot) voted in favour of the aforementioned motion. However, another (alternative) motion was proposed, and it was voted upon at the same time. This motion called for an internal investigation, spearheaded by a subcommittee of Council, to look into governance and procedural matters relating to the Senate meeting of 30 September. The alternative motion also garnered 14 votes. In other words, there was no consensus in Council on how the matter should be handled. The Deputy Chairperson of Council (who was chairing the meeting) cast the deciding vote in favour of the second motion. In our opinion, there are a number of procedural problems with the way in which the vote unfolded. The Chairperson of Council did not recuse herself from the vote despite considered advice to do so, her obvious conflict of interest, and the potential risk to the University

The Deputy Chairperson of Council is also the Chairperson of the University Human Resources Committee. The fact that she cast the deciding vote – even though the latter role makes her a central protagonist in matters relating to Professor Lis Lange's departure – is also a cause for concern. We believe that these potential irregularities render the decision of Council fatally flawed.

Both the process leading up to the vote, and the outcome to which it gave rise, cannot be reconciled with the principles of good governance. In closing, we take note of the statement released by the Deputy Chairperson of Council after the Special Meeting of Council. We regard its contents as inaccurate; we distance ourselves from it; and we reserve our rights on the way forward.

Signed by: Sheila Barsel, Malcolm Campbell, Michael Cardo, Danwood Chirwa, Ezra Davids, Marlene Le Roux, Shuaib Manjra, Nazeema Mohamed, Ntobeko Ntusi, Jacques Rousseau, Gareth van Onselen, Dianna Yach.”.

[441] On 8 October 2022, Ngonyama, faced with mounting disquiet at UCT, issued a further statement, in an attempt to soften the fallout from Gwangwa’s statement. It read:

“Council debated two possible alternative proposals: an internal or external investigation. After much deliberation, Council determined that all internal processes should be exhausted prior to considering an external process. Council also felt that internal processes have the potential to foster reconciliation and avoid polarisation. In addition, one potential outcome of an internal investigation could also be a recommendation to undertake an external investigation. However, an internal investigation process should have credibility and stakeholder buy-in.

To be elected as Chairperson of Council is an honour and a privilege, which comes with great responsibility – one that I do not take lightly. In light of this, as Chairperson of Council, I have decided to call for an independent investigation, led by a retired judge, that also takes into account the objectives of the internal investigation. I will ask Council to reconsider its decision of 6 October 2022 in the interest of a process that has credibility and stakeholder buy-in.

I call for calm in the best interest of our university, as this process unfolds.

The terms of reference should be developed jointly by Council, Senate and our wider multi-stakeholder body: the Institutional Forum.”.

[442] Council met again on Saturday, 15 October 2022. This time the VC and the Ngonyama recused themselves from this agenda item. Gwangwa, who,

chaired this item, did not. A number of Council members contended that she should recuse herself. A debate ensued which took place over the course of 4.5 hours. She refused to put the issue of her recusal to a vote of Council, and instead sought to dissolve the Council meeting and bring it to an end.

[443] She then relented and, “*as a gesture*” said she would vacate the chair but remain in the meeting for purposes of the item, including voting on it. Members of Council who were opposed to her participation indicated that they would remain in the meeting under protest.

[444] In light of Gwangwa’s involvement in the events leading to Lange’s departure, and her conduct at the 6 October 2022 Council meeting, she again ought to have recused herself.

[445] Council then rescinded its resolution of 6 October 2022 and resolved to appoint an independent panel headed by a retired judge. The resolution read:

“1. That Council establishes a panel of five independent members, chaired by a senior retired judge, all approved by Council, to investigate:

(a) whether the Vice Chancellor and the Chairperson of Council misled Faculty Boards, Senate and/or Council regarding former DVC Lis Lange’s availability for a second term and the reasons she did not pursue it; and

(b) all matters related to executive relationships, including the number of, and reasons for resignations within and beyond the executive, with due consideration of possible reasons for this.

2. That the panel is authorised to speak to any current or departed staff and/or members of this or previous Councils of UCT, whether they have signed an NDA or not, from which they are considered released by this resolution insofar as this is legally feasible.

3. That the panel prepares a report to Council by 31 December 2022 making specific conclusions on the issues identified in (1) above and recommending the specific actions to be taken generally and against any specific

individuals; alongside a redacted report that will be made available to Senate.”.

[446] The new resolution meant that Ngonyama and Phakeng would have to answer the allegations regarding their role in the departure of Lange, amongst other matters.

[447] Hall testified that Mr Aadil Patel of Cliffe Decker Hofmeyr Inc. called him on 23 October 2022 on behalf of his client, Ngonyama. Hall thought that the purpose of the call was to discuss the timeline regarding the processes leading to Lange’s departure, which Hall was assisting Ngonyama with. However, Patel told Hall that he was not interested in the timeline, but in what he considered the “*strategic issue at play.*” Hall understood this as meaning that someone would have to be sacrificed to safeguard Ngonyama’s reputation, and this would have to be the VC. Hall made a contemporaneous note of this conversation.

[448] On 26 October 2022 the Senate adopted a report from its sub-committee that had diligently gathered the facts regarding Lange’s departure. It resolved to support the resolution calling for the matter to be investigated by an independent panel.

[449] Council convened again on-line on 7 November. In the interim two Council members, Ms Zama Khanyile and Ms Kholiwe Makholiso had resigned. Ngonyama recused herself from the meeting. Gwangwa took over as Chairperson but left the meeting alleging that it had been convened irregularly, without sufficient notice. Following her departure, the Registrar advised that the meeting may proceed after the appointment of an acting chair. Ms Mokgubudi was elected to assume the responsibility.

[450] Some members continued to raise procedural objections to the meeting continuing. Lushaba was particularly vociferous and “*cautioned the chair against becoming a tool by which a respectable African woman becomes a tool to legitimate unjust decisions.*”. The acting-chair ruled that the meeting continues.

[451] As time had now run out the meeting had to be adjourned. It reconvened on 17 November 2020. Mohamed was elected acting-chair. It was announced that

another Council member, Ms Siza Mzimela had also resigned. Once again procedural objections were raised with the continuation of the meeting, mainly by Lushaba.

[452] The meeting considered a legal opinion from Advocate O’Sullivan. Council correctly accepted her advice that the VC, the Chairperson (Ngonyama) and the (Deputy Chair) had conflicts of interest regarding all matters concerning the investigation into Lange’s departure and that they needed to recuse themselves from all meetings dealing with this issue.

[453] Thereafter, a debate ensued regarding the terms of reference of the independent panel, and in particular the nature of the investigation against the VC and Ngonyama. Once again, the meeting degenerated after Lushaba’s intervention. He accused Council of repeating the *“injustices of the past that often saw black women...being victimised by intertwining systems of racism and patriarchy.”*

[454] The minute then records the following:

“Several members expressed their displeasure with Dr Lushaba’s comments, stating that these were racially insensitive and inflammatory, and in particular took issue with Dr Lushaba commenting on black women’s behalf, when, in their view, those black women in Council were more than sufficiently strong and capable of speaking for themselves. Professor Ramugondo placed on record, however, that she did not take offence with Dr Lushaba speaking in defense of black women and argued what was happening in Council and the allegations made against the Chairperson and Deputy Chairperson of Council and the Vice-Chancellor were symptomatic of a culture of institutionalised racism that continued to pervade UCT. Dr Lushaba also argued that the Chairperson (Mohamed) was being used to legitimise...a racist and sexist attack on the Chairperson of Council and the Vice-Chancellor...and that the Chairperson (Mohamed) would be remembered for this if these terms of reference were to be adopted. Mr Davids objected in the strongest terms to Dr Lushaba’s accusation against the Chair, the language of which he saw as [intimidating] and completely contrary to collegial debate. Mr Chetty echoed Mr David’s objection, objected also to Professor Ramugondo’s input and reminded her that

in her position as Deputy Vice Chancellor she was meant to represent all people who formed part of UCT community, and finally objected to Dr Lushaba's general behavior throughout the meeting, which...had been entirely inappropriate and disrespectful to a number of members of Council and the Registrar...". (Emphasis added)

- [455] There was no evidence to support the views of Lushaba and Ramugondo. In particular, there was no evidence of racism by any member of Council supporting the investigation of Lange's departure and related matters. Quite the contrary, Lushaba himself has used offensive and racially loaded language to stigmatise those with whom he disagreed.
- [456] Ramugondo bore a personal and racially loaded animus against Lange, as observed earlier. She also testified that she didn't find Lushaba's conduct in the meeting offensive, because, in her view, he did not "*incite violence*".
- [457] Ramugondo ought to know that hate speech, harassment, threats, intimidation, ethnic slurs, personal insults and racial intolerance is prohibited in UCT, and particularly in Council's Code of Conduct, referred to earlier. Incitement to violence is not a condition for prohibited speech. That she holds these views is all the more extraordinary because she occupies the sensitive post of DVC of Transformation and Student Affairs, which requires her to build an inclusive community.
- [458] The minute also records that the VC participated in the debate and expressed her disapproval of the adoption of the proposed terms of reference. It is unclear why she participated in the meeting when, once again, she was conflicted.
- [459] The meeting concluded with the adoption of the terms of reference and the list of names for the proposed independent panel.
- [460] On 22 November 2022, the Sunday Times interviewed Phakeng regarding the circumstances of Lange's departure. Contrary to her earlier complimentary views regarding Lange's performance and competence as a DVC, she now also felt unconstrained to defame Lange in the media, once again by using racially loaded language:

“The thing about Lis Lange is that her appointment did not follow proper governance rules. Lis Lange has never taught anyone at university level, but she got the job of a deputy VC of learning and research. Had she been black she would not have made it that far (I) have never hid the fact that I have never supported Lis Lange’s appointment. At least initially. Once she got the 239 majority nod after Price’s vigorous campaign, including gathering people who, like me, never supported her initially, I also consented.”.

In publishing this statement, she breached clauses 7.3 and 7.4 of the NDA referred to earlier. She did it again, repeatedly, in several interviews with the media early in 2023. We have referred to one of them earlier, i.e., the interview with ENCA on 1 March 2023. In her testimony before the Panel she admitted to the interview and was constrained to accept that she had breached the agreement, again placing UCT at risk.

Ms Gerda Kruger is suspended

[461] Kruger joined UCT as ED for the Communication and Marketing Department (CMD) on 1 December 1999. During her tenure at UCT, she served under three former VCs, prior to the appointment of Phakeng as VC: Dr Mamphela Ramphele (1997 – 2000); Prof. Njabulo Ndebele (2000 – 2008); and Dr Max Price (2008 – 2018).

[462] As ED, Kruger was always part of the senior leadership group that reported directly to the VC. She attended executive meetings as a strategic adviser on communication issues and also advised the VC, the Executive, and the senior management at UCT on communication and marketing.

[463] Her role as ED of CMD was to develop, implement and monitor professional and strategic communication and marketing strategies and initiatives across UCT and to all its stakeholders, to ensure the appropriate positioning of UCT in South Africa and internationally.

[464] In practical terms, her job entailed being engaged in executive (particularly the VC’s) communication to stakeholders, crisis communication, media liaison, communication on the UCT website and other social media platforms, all high-level VIP visits and events hosted by UCT, public relations issues content

development and distribution via the UCT newsroom. CMD's budget was about R40 million for which the ED was responsible.

[465] Kruger met Phakeng for the first time after appointment as DVC in July. Kruger reported to Price then, and to Phakeng after 1 July 2018.

[466] Kruger observed Phakeng's frequent unprofessional behavior and witnessed the VC "*decimate individuals and destroy the team around her*". She testified that the VC seemingly had a special dislike or hatred for Lange, and often silenced and humiliated her in meetings. Kruger described the leadership style of the VC as "*extraordinarily problematic and the most trauma-inducing manager I have ever experienced in my 40 years of work.*".

[467] Regarding her own relationship with the VC, Kruger testified that the VC accused her of being a "*Max supporter*"; and told her that "*she does not need me*"; that "*she brings a brand with her of thousands of supporters*", and "*that she does not need the UCT brand, but that her brand will hugely benefit UCT*". Kruger said that the VC warned her that if she "ever spoke to Max Price again, she would see it as insubordination".

[468] In early 2019, an anonymous person in CMD phoned the UCT hotline to complain about a range of issues in the Department. These complaints were originally levelled against a manager in the newsroom, but evolved to allegations against numerous staff members and, eventually, also against Kruger. The allegations against Kruger were that she appointed two black South Africans "*because she knew them*", and that she bought a computer for private use with UCT's funds, which was not true. The VC launched an external investigation and called the entire team of CMD together. The VC instructed Kruger to be quiet at this meeting. Kruger described her behaviour and the impact on the staff as devastating for the Department.

[469] The allegations placed Kruger under severe pressure from staff members to explain what was going on. However, whenever she tried to raise it with the VC, she was warned not to oppose or obstruct her. DVC Feris and COO Morar were appointed to investigate the allegations. They found no impropriety and the matter was closed.

[470] Kruger described the VC's behavior as extraordinarily suspicious at times. At some stage, she told Kruger: *"I don't care how many times you run to the Ombud with your friends"*. The latter was apparently a reference to the complaints to the Ombud against the VC, referred to in this Report. Kruger denied this accusation, but to no avail and their relationship continued to deteriorate.

[471] Kruger also highlighted the problems she experienced regarding the VC's social media presence. There were many posts that caused embarrassment for UCT. Kruger tried to persuade the VC to agree for CMD to manage her social media, but she refused. Nothing could dissuade her from posting on social media.

[472] Kruger referenced certain examples of social media posts by the VC during her evidence and in her statement to the Panel, which included:

- derogatory statements were made by the VC regarding the LGBTQ+ community, which were well documented in the press, and which later required a public apology from the Chairperson of Council; and
- the following inappropriate post regarding the daughter of Lange sent to a junior staff member at Kruger's department in April 2022, during Lange's last month UCT:

"Please note that Puleng Lange is Lis Lange's daughter - the white woman DVC who is an associate professor and is very upset about the success of a black African woman, full professor and rated scientist. Puleng Lange Stewart MUST declare her interest - she is busy fighting her parent's anti-transformation battles..."

Her parent has made my life hell and now the daughter!"

[473] Kruger testified that she brought the post about Lange's daughter to Hall's attention, because she thought he could do something about it. He recommended that nothing be done about it. Hall conceded that these posts were particularly concerning and that the failure to hold the VC to account for them reflected a paralysis of governance at UCT at time. It did not occur to Hall that his advice to Kruger to drop the matter contributed to this governance failure.

- [474] During 2022, Hall and the HR Department introduced the Executive Transformation Initiative (“ETI”) with the intention to advance transformation within UCT. The model used was to select and mentor a candidate (reportee) to take over the role of the line manager who continues to act as an advisor and support during the development period, after which the post is advertised and filled.
- [475] The ED of the HR Department, Hoosain, was the first pilot. She stepped down after agreeing to an ETI on 1 May 2022 in terms of an agreement reached with UCT. Distressingly, instead of being a vehicle for genuine transformation, the ETI was used by senior ED’s as a way out of UCT, weakening it in the process.
- [476] Kruger testified that she, as the ED: CMD was the second pilot of the ETI initiative. The details of the ETI agreement between Kruger and UCT were in the final stages and the agreement was expected to be implemented on 1 June 2022. In terms thereof, Kruger would have stepped back as ED of CMD. UCT would have advertised for a new ED: CMD and run a due process with a selection committee, in terms of the UCT HR policy. Kruger would have continued to work as the outgoing ED, from 1 June to 31 December 2022.
- [477] Kruger proposed that Kylie Hatton be appointed as Acting ED: CMD for this seven-month period, with the support of Kruger. From 1 January 2023, the new ED would have been appointed and Kruger would have support and mentor this new ED for 6 months, or more if needed. Kruger would then have taken an incentivised early retirement and be granted an 18-month salary package. Effectively, this agreement would have provided Kruger with 13 months’ salary and thereafter a further 18-month salary package.
- [478] Kruger understood that Hall had discussed the finalisation of this agreement with the VC on 8 May 2022. However, on 11 May 2022, Kruger was summarily suspended. The events that led to her suspension were as follows:
- [479] After Feris’ resignation, CMD collated archived stories about her tenure as DVC in a souvenir brochure. It was a farewell gift from CMD.

- [480] Kruger personally had very little to do with the production of the publication. The staff member who produced it, used earlier published material and included a VCDESK publication paying tribute to Feris for this purpose.
- [481] The VCDESK contribution to the souvenir publication was an exact reproduction of an online tribute done by the VC in 2021, shortly after Feris left UCT. In it the VC praised Feris' contribution to UCT.
- [482] Kruger said that when she received the printed publication, she thought that the team overdid it a bit. She expected something much smaller. But she did not think it was an issue and had it delivered to Feris. The actual publication, cost only about R5 000 to produce. Five copies were made. Three were given to Feris and two were kept as a record by the CMD.
- [483] Kruger realised that the publication might anger the VC, given her antipathy toward Feris. Her fears were well-founded: when the VC became aware of the publication, it led to her "*exploding in an Exco meeting*". Kruger later apologised to the VC in an attempt to calm her down, but to no avail. She was suspended and then charged.
- [484] The charges against her were that she had no authority to make the publication; that she did not have the budget authority to do so; that she did not inform the VC about the publication; and that Kruger used the VCDESK in the publication without the VC having signed off on it.
- [485] In addition to her suspension, Kruger was barred from accessing her emails and from entering her office at UCT. She was also prohibited from having contact with any of her work colleagues. The date of her intended disciplinary hearing was postponed by UCT on several occasions. Kruger testified that, although she made several attempts to reconcile, these efforts were all rejected by UCT. She testified about the severe psychological suffering that she had endured because of her suspension. The traumatic effect which this had on her was still obvious when she testified before the Panel.
- [486] In her public statements the VC accused Kruger of having "*forged*" her signature in reference to the VCDESK contribution to the souvenir brochure. Kruger also

testified about several, further, defamatory remarks made about her by the VC in the mainstream media and on social media.

[487] The Panel concluded that the suspension and disciplinary charges were driven by her dislike for both Feris and Kruger and were an overreaction and disproportionate to the purported transgression, especially because the VCDESK contribution to the souvenir brochure was an exact copy of portions version originally written by the VC, still accessible on the UCT web page.

[488] The accusation that she did not have the budget authority, had no merit, given the size of the CMD budget, and Kruger's authority to sign off on much larger projects.

[489] The charges that she did not inform the VC about the publication and that she used the VCDESK in the publication without the VC signing off on it were trivial.

[490] Hall described the steps taken by the VC and the charges against Kruger as follows:

"Yes...I was aware, and the Vice-Chancellor discussed with me. My initial reaction to the situation with Gerda Kruger was, ...maybe this is something we should just let go...[!]t's not unusual for universities to write celebratory manifestos of people's performance even though everybody is really pleased to see them go."

[491] After Kruger's suspension, the VC continued to make untrue and defamatory statements about Kruger on social and in the mainstream media. These included that: she had been *"found guilty of gross misconduct"*; she *"is untouchable because she is a white person"*; she *"forged her signature"*; she took steps against Kruger because she forged her signature; and that she had acted *"unethically"*.

[492] The VC's evidence about these posts was confusing and contradictory: when asked about the post that Kruger had been found guilty of gross misconduct, she initially denied that the post was about Kruger, then admitted that it was a reference to Kruger, only to deny it again, and ultimately admitted that the post was about Kruger, and that it was factually incorrect.

[493] The VC initially also maintained that she was still of the view that the publication of the VCDESK-contribution, constituted a criminal offence of fraud and forgery because it created the impression that she, as the VC, contributed to the souvenir brochure. When pressed to explain this, she testified that she would have been satisfied if the brochure credited her for this contribution, which it, in fact, did. She eventually testified that this “*was part of a continuing tendency to disrespect*” and to be condescending towards her. Astonishingly, the VC then said that, had Kruger’s department sought her permission to use the VCDESK contribution, she would have granted them permission to do so.

[494] During her evidence, the VC referred to a legal opinion, which she obtained from Mr Zola Mcaciso of the firm of attorneys, Mcaciso Stansfield Inc. (It bears mentioning that Stansfield is the same attorney that assisted the Chairperson and Hall with the NDA of Lange). The firm was appointed to investigate the circumstances of the production of the brochure. Their legal opinion following the investigation informed the charges against Kruger.

[495] It reveals the following:

- The opinion is dated 19 August 2022, more than 3 months after the suspension of Kruger on 11 May 2022;
- It contains several factual inaccuracies, the most glaring of which is the finding that the VCDESK contribution to the souvenir brochure was ‘reworked’ and that the brochure contained a changed version of the original version;
- The VC never informed the author of the opinion that, had Kruger’s department sought her permission to use the VCDESK contribution, she would have granted them permission to do so;
- On its own terms it did not establish “*fraudulent and dishonest*” conduct on the part of Kruger. The highpoint is that CMD failed to obtain the VC’s permission, and that the publication was not authorised, which was not in issue; and
- The conclusion that Kruger had made herself guilty of “*serious misconduct*” was wrong.

[496] Following the social media posts of the VC about Kruger, she lodged several, formal grievances against the VC from 7 October 2022 to 1 March 2023. None of her grievances were attended to. She escalated her complaints to the Registrar, the COO and the Chairperson of Council.

[497] Kruger was informed that her grievances would be attended to only after her disciplinary hearing had been finalised. But UCT repeatedly postponed her hearings. When she testified before the Panel in May 2023, neither her disciplinary hearing, nor her grievances had been attended to.

[498] Kruger testified that the only written response she received regarding her grievance against the VC, was from the VC herself, the very person about whom she was complaining. The letter said that *“Bongani, the ED, HR will attend to the matter.”*

[499] The pending disciplinary charges against Kruger, as well as the failure by UCT to act on her grievances against the VC, compelled Kruger to obtain legal representation. She incurred substantial legal costs in addition to the immense emotional strain she experienced.

[500] On 26 June 2023, a few weeks after the VC’s departure, the Registrar informed the Secretariat of the Panel that:

“At its meeting on 17 June 2023 the UCT Council resolved as follows:

1. *Ms Kruger be offered an incentivised early retirement settlement [REDACTED] [REDACTED] The university’s disciplinary case brought against Ms Kruger will be withdrawn and Ms Kruger will be required to withdraw the grievances that she had lodged. This settlement is proposed to take effect as from 1 July 2023.*
2. *A letter of apology from UCT will be issued to Ms Kruger; and*
3. *UCT will investigate whether the legal costs that Mr Kruger incurred in responding to the disciplinary matter and in her dispute with UCT, could be recovered against UCT’s insurance.”*

[501] The Evidence Leaders pursued this with Kruger, who informed them in writing as follows regarding the status of a possible settlement with UCT:

- She has had ongoing contact in meetings with the Interim Vice-Chancellor (Reddy) to resolve matters, but there has been little substantive progress;
- Her suspension has not yet been lifted, despite repeated statements by the interim Vice-Chancellor that this will be done;
- At the request of the interim Vice-Chancellor, she has drafted and submitted a draft apology for UCT to him on 2 July 2023, that is to be issued by the Council once matters have been finalised. However, no final decision has been taken in this regard by UCT;
- She has asked to be reimbursed for the substantial legal costs, which she had to incur (approximately R200 000), in preparing a defense against the disciplinary charges against her, as well as in communicating with UCT. However, she has been informed that UCT's insurers will not pay these costs; and

[REDACTED]

[REDACTED]

[REDACTED]

[502] Kruger has also informed the Evidence Leaders in the same letter what she hopes to achieve as a settlement with UCT:

- A mutually agreeable apology for the grave injustice that she had to endure, which is to be published on UCT's website;
- Payment of all her legal expenses that she had to incur as a result of her suspension; and

[REDACTED]

[REDACTED]

[REDACTED]

[503] Given all the facts surrounding the suspension of Kruger, the Panel is of the view that Kruger's settlement proposal is reasonable and therefore recommends that Council settles the dispute with Kruger on the basis suggested by her.

Mr Royston Pillay resigns

[504] Pillay is the Registrar of UCT. He occupies a central and critical role in its administration and governance. He resigned, reluctantly, on 2 December 2022 and informed Phakeng that he was doing so because the prevailing circumstances made his continuation impossible. It was a difficult decision because he has been a member of UCT for 26 years, and its Registrar for the past seven. He was, and is, at the peak of his career and could continue for a further five years. He has no alternative employment.

[505] In his written submission to the Panel, he explained his dilemma thus:

“I was not prepared (no self-respecting person would be) to continue to work under the circumstances that prevailed at the level of senior management, and the dilution of sound institutional governance that was placing the institution at risk and held a risk of damage to my professional reputation. My notice of exit was in many ways a protest action.”

[506] He explained further that the main reason he gave notice to leave was *“the intolerable, un-collegial and accusatory nature of the relationship with the VC.”* An example of this was an incident in November 2021 when the VC sent an email to him accusing him of undermining her by *“shouting at her during an Executive meeting.”* [REDACTED]

[REDACTED] A review of the recording of the meeting revealed that the VC had misread his comments. In the BOP documents the incident was cited as an example of the VC’s failure to support the Executive team.

[507] Another example of the improper pressure he experienced was when the VC instructed him to approach media houses for information regarding the source of leaks from the Council meetings that were reported in the media. To his credit he refused to do so, making clear that it was inappropriate for him to confront media houses on an issue that concerns press freedom on behalf of UCT. He added that the media had not acted unlawfully in obtaining the information and warned that UCT would be criticised in the media and elsewhere for demanding the disclosure of their sources.

[508] Nonetheless in April 2023, in one of her media interviews, the VC accused the Registrar of not preventing the media leaks.

[509] Her improper instruction to the Registrar exemplified another serious problem with the VC's leadership; her lack of awareness of a basic principle in the Bill Rights i.e., the freedom of the press and other media to receive or impart information or ideas. The right not to disclose sources of information lies at the heart of media freedom. Worse, her stance placed UCT at the risk of public opprobrium, and therefore reputational damage, had the Registrar acceded to her demand.

[510] In his testimony, the Registrar referred to several serious governance failures. These included:

- The failure of the Phakeng, Ngonyama and Gwangwa to recuse themselves from the Special Council Meeting on 6 October 2022;
- The improper release of a University communique by Gwangwa regarding that Council meeting, which placed UCT at risk;
- The VC's insistence to provide the report of the 30 September 2022 Senate meeting, from which she was absent, and which ought to have been given by Harrison, who was the Acting Chairperson of the Senate meeting;
- The involvement of both the Chairperson and Deputy Chairperson of Council prior to the Council meeting in the decision to appoint Hall instead of Ally;
- The VC's improper instruction to the Registrar not to attend meetings with UCT's external auditor to provide information on governance issues arising from Council meetings that had been reported in the media – in this instance the controversy concerning conflicts of interest in Council meetings. She then dismissively and wrongly told him that his job was that of a "*minute-taker*"; and
- The failure of the Chairperson of Council to understand the difference between management and governance.

[511] The Registrar testified about two other instances of poor governance that concern the Chairperson of Council. The first concerned a Special Council Meeting called for by a Council member Manjra on 25 May 2022 and other members of Council at the height of the Lange controversy. It raised fundamental issues of institutional governance, including the *“the arrogation of authority... of the Chairperson and Deputy Chairperson of Council with regard to matters that require the knowledge and approval of Council.”*

[512] Clause 19 of the Institutional Statute regulates special council meetings on short. It provides:

“Special meetings (1) Special meetings must be—held - (a) when called by the chairperson; and (b) when a written request, for a special meeting, stating the object of the meeting, is received by the registrar from at least five members of the council. (2) At least three days’ notice must be given of a special meeting, unless, in the opinion of the chairperson, there is an emergency that warrants a shorter period of notice...”

[513] Manjra’s written notice complied with the statute by stating the object of the meeting and was supported by the requisite number of at least five members. The meeting must be called three days after notice is given, or reasonably soon thereafter.

[514] The Chairperson called the Special Meeting more than three weeks later, on 20 June 2022. At her instance a resolution, supported by fourteen members of Council, was adopted not to continue with the meeting until further documentation was provided. The statute has no such requirement.

[515] On 13 July 2022, seven Council members, including the Manjra, emailed the Registrar reiterating that special meetings do not require supporting documentation. Nevertheless, they asked the Registrar to provide a copy of Lange’s NDA, and the minutes of the Special Council Meeting held on 6 May 2022, at which the Chairperson had given her version of Lange’s departure for the meeting.

[516] On 26 July 2022, two months after the initial notice was given, the Chairperson sent an email to the Registrar instructing him to *“please send this response to*

Shuaib” signed off in his name. The “*response*” apparently drafted by her, and copied to Phakeng and Gwangwa, stated that Manjra’s email “*remains lacking in sufficient detail*” in relation to some of the proposed agenda items and that the meeting may proceed only after the persons named therein have been afforded the opportunity to respond to the further particulars.

- [517] The Registrar refused to accede to her instruction. He objected to sending an email in his name, which he had not written, and which he believed was not aligned with the statute. He told the Panel that the instruction was a “*misuse of the position of Registrar to submit an email letter that was not his. It ran the risk of potentially compelling the Registrar to make an error. And the ethics of me sending a letter where I had no part in the writing thereof, and my name already having been inserted...is equally worrying. This represents a very serious governance concern.*”.
- [518] It is apparent that Ngonyama had misused her position as Chairperson to stymie discussion of matters in which she was personally implicated. Furthermore, the adoption of the Council resolution on 20 June 2022, to achieve this purpose was inconsistent with the statute, irregular and antithetical to her fiduciary duty to UCT. It represented another serious governance failure.
- [519] It is a credit to the Registrar and those members of Council who resisted this stratagem that the failure was ultimately mitigated, but only after further damage was done by the events that followed.
- [520] There was another instance arising from the Council meeting on 15 October 2022, from which Ngonyama had recused herself, pertaining to a discussion of the appointment and composition of the independent panel. Council instructed the Registrar to prepare a draft report on the meeting for submission to the Minister of Higher Education. He prepared the report and submitted it to Ngonyama.
- [521] She prepared a substantially revised document and sent it back to him with an instruction to “*use this version.*”. Again, he properly resisted. It escaped her that it was improper for her to prepare a report to the Minister regarding a matter on which she was conflicted; about a meeting she had not attended; and which was inaccurate.

[522] At the time of writing UCT was negotiating with the Registrar to withdraw his resignation. He is an asset to UCT and his presence will be vitally important in assisting the transition to the new Council next year.

Dr Reno Morar resigns

[523] Morar was employed at UCT as the COO, a position that was created to:

“Improve the efficiency of the university’s operations by having the COO oversee all the relevant responsibilities that had previously been distributed between the then four deputy vice-chancellors (DVCs): Finance, Information and Communication Technology Services, Properties and Services, and Human Resources. The executive directors of these departments report directly to the COO. While the role of the executive director of Finance was initially included in this portfolio, that role’s designation was changed to chief financial officer (CFO) and now reports directly to the VC.”.

[524] He participated fully in the Executive and was thus able to testify about the matters that contributed to its dysfunctionality. In this regard he testified about how the deteriorating working environment *“became toxic and untrustworthy”* and *“psychologically unsafe”* to work in. This compromised his ability to fulfil his mandate, and ultimately led to his resignation, with effect from 9 June 2023. He gave notice to UCT on 9 December 2022. He attributed this primarily to the VC’s *“leadership traits that are problematic and ...not conducive to an academic institution.”.*

[525] Morar acknowledged certain positive traits of the VC’s leadership, describing her as “colourful, energetic, diligent, passionate refreshing, impressive and respected.” However, he stated that, he also experienced her leadership as problematic and not conducive to an academic institution.

[526] He confirmed the evidence of other witnesses and pointed to her:

- abrasive behaviour;
- public belittling and humiliation;
- false accusations, mistrust, insecurity and endless baseless accusations of trying to undermine, unseat or sabotage her role;

- authoritarian leadership under the guise of ...holding people accountable;
- differential treatment of colleagues where for a similar event, a colleague who differed with her was publicly castigated, disrespected and belittled, while one of her “supporters” was not;
- increasingly building her power through patronage that ‘borders on class, gender and racial stereotyping’;
- Inability to accept that leadership is about leading and being led; and
- Inappropriate social media presence.

[527] He testified, as other witnesses have, that the VC would brook no disagreement, from anyone, including himself. He recalled that:

“I would give my opinion and there were significant times when I said to Mamokgethi the issue is not that I’m trying to undermine you, the issue is that I have a difference of opinion with you. This is a university where opinions and ideas, we battle around those things. We don’t personalise them and we don’t try and demean people because they have a difference of opinion. Those sorts of things started ramping up significantly. I saw it happen with colleagues, with Loretta, with Lis, with Royston, so all of those aspects make an environment – really it becomes unsafe to offer your opinion [...] certainly in the Exec and in the Leadership Lekgotla which is a broader group people would hold back on giving their opinion for fear of reprisal.”.

[528] Morar pointed to another “leadership trait” of the VC which negatively impacted on his ability to perform his function. She would unsettle him by affirming him on the one hand and then insult him on the other. Lange also experienced this behaviour from her.

[529] To demonstrate the point, he explained that she would insult him by calling him a “communist” – aware of his political background – thereby implying that he was unable to negotiate an income-generating project for UCT because of his alleged aversion to business. At the same time, she would entrust him with the responsibility for doing so. He testified:

“She was concerned that I would be opposed to the UCT Online High School because it was income generating. But ultimately I negotiated the deal around the structuring of the funding because that’s my strength. I can see things. I can negotiate things. I can cut a deal. Well, ultimately the deal gets cut ...But that’s the kind of tension that happens in the way in which you deal with Mamokgethi. So if you want to label me a Communist and then say you won’t support the UCT Online High School but, Reno, I’m entrusting you to negotiate the deal, that’s the tension that you face. One is an insult, and one is realising that you have a talent to do something. That tension exists and has been existing for a significant number of years.”.

[530] When the VC’s behaviour failed to improve, he discussed this with his BOP coach telling her that:

“I can no longer work in this environment. I want to return to the faculty as soon as possible. And her advice to me at the time, she said Reno, do not make that public too early because it could jeopardise your career and that’s [from] someone who’s not in the university.”.

[531] In his view the BOP understood the extent of the problem with the VC and the adverse consequences it could have on the careers of those she disliked. The experiences of others who she targeted unjustifiably, including, Feris, Lange and Kruger, confirmed this.

[532] Morar added that the failure to remedy this problem lay squarely with the Council. He insisted that:

“It cannot be that those of us who are members of the Executive must – although we were members of Council, ...assume primary responsibility to manage. We can manage it at face value. We can contribute to changing it, but ultimately it is Council’s responsibility who set up this team to help us to be a better Executive and, ja, it’s still something that – it still grates me today that we in a way were left in this environment without significant intervention.”.

[533] The evidence of Morar corroborated that of several other witnesses: that one of the most serious failures of governance at UCT, was the failure by Council to hold the VC to account.

[534] Morar was an impressive witness. He felt compelled to resign prematurely for the reasons stated earlier, and echoed the reasons given by others for their resignations and terminations. It was a difficult decision, not least because he will suffer substantial financial harm by exiting UCT and the UCT Retirement Fund. His departure is a set-back for UCT. UCT may not be able to compensate him for his financial loss, but it must reflect on the reasons for his departure and its own failure to deal with the causes of his departure to prevent further, similar damage to the institution.

Professor Linda Ronnie resigns

[535] Unlike the other resignations considered, all of whom were members of the Executive team, Professor Linda Ronnie was a Dean and in this capacity attended meetings of the SLG. She was promoted to the position of Dean of the Faculty of Commerce at UCT in October 2018, having worked as a lecturer since 2002.

[536] UCT's policy on the appointment of Deans set out the following criteria for appointment, which she clearly met:

"2.1 In appointing Deans, UCT must seek individuals who:

- i. are scholars of note and have credibility among their academic peers;*
- ii. will offer academic leadership in the faculty, it being understood that this will include:*
 - being able to plan effectively and to inspire and innovate;*
 - having a strategic vision for the faculty, and for the role of the faculty in the institution; and*
 - having proven leadership and management skills.*
- iii. have a proven transformation skills record and will strive to transform the faculty in ways that achieve social justice in South Africa, which must include meeting staff and student equity targets."*

[537] Ronnie testified that she embraced her appointment enthusiastically and enjoyed her responsibilities. Initially, she was optimistic about the VC's

leadership and recalled her interaction with the VC after being approved by the Selection Committee:

“At the end of the Selection Committee the VC turned to DVC Lange and said, ‘ah, three strong women. That’s going to be a challenge, don’t you think’? But how it – or ‘how it – and how exciting’. Words to that effect. So, that sent me a positive signal which I would say was quite pleasant during the first six months, I would say, of our relationship.”

[538] However, Ronnie gradually became less sanguine about the VC’s leadership ability with each interaction. As other witnesses have observed, she also experienced the VC’s hypersensitivity to criticism. She described it thus:

“What I began to notice was her sensitivity when being challenged. So, I would say the first thing that I noticed was that she didn’t like being challenged. You were certainly on the receiving end of an underhand comment thereafter. And that the tone of our meetings... One had to be acquiescent. I think that was it. So, the flaws that I began to see in her were around her leadership style.”

[539] Ronnie testified that there were various factors that contributed to her decision to resign. One of these was that she noticed that some of her colleagues became increasingly silent in Deans’ meetings choosing to avoid confronting difficult issues, which could potentially provoke the VC’s wrath. In her view, this was antithetical to both her experience as a senior academic and leader within UCT, where robust debate was encouraged and embraced. She recalled one such exchange:

“I think if you’re sitting in sort of senior meetings there is a moment to debate. This is a time we challenge and I was taken aside by at least three people in our Leadership Lekgotla and told, stop it. Don’t speak like this. Don’t raise these issues. Just leave it. And so that’s – I think that’s where my discomfort grew.”

[540] Ronnie also testified about an incident when Phakeng wrongly believed that she had laughed at her during a meeting. After the meeting, she attempted to talk to Phakeng. This, she testified, was how Phakeng reacted:

“I’m not prepared to speak to you’. And I [Professor Ronnie] said, ‘what happen – what is it’? So, now I’m honestly caught completely by surprise. And she said, ‘you laughed at me, you and your friends. You were laughing at me’. And I said, ‘in the Lekgotla’? But I couldn’t even remember the thing, firstly. So, I said, ‘why would I be laughing at you’? But it wasn’t – it was a rhetorical question, really. She said, ‘you laughed. You laughed. But it’s fine. No, it’s fine. It’s absolutely fine’. So, I said, ‘no, we need to talk about this. I’ll come and talk to you’. And she said, ‘I don’t want to talk to you. I’m not speaking to you’. So, I was – and then I said, ‘oh, it was that Get Smarter thing. No, I did not laugh at you. I was quite passionate about it, but laughing, no’. And she, ‘I’m not speaking to you’. So, I said, ‘okay, I’ll speak to Lis then’. ‘Fine, okay’.”.

[541] She recalled a meeting at which the VC was present when there was a discussion about promoting “people of colour” to higher roles in UCT, to enhance its equity profile. Ronnie expressed the view that she agreed with the idea generally but added that it would be counterproductive to appoint researchers, who have a huge workload, to senior administrative posts for this purpose, while still expecting them to deliver on their research outputs. She testified that she was stigmatised thereafter. She described this as follows:

“[In] the meeting when you’re raising this you are a lone voice raising this while people around you were going, ja, that’s true. That’s true. But not speaking up. Because I hadn’t yet learned the culture of the meeting, okay. I’m not – I don’t have a personality that is quiet. And I do one of two things, either I’m engaging or I’m okay, fine, carry on [...] And when you are in a meeting and you’re raising these issues and someone comes for you, because she’d come for you. She would come for you and she would come for you, and then she would in subsequent meetings go, ‘oh, but this is the person who wants White HoDs. Oh, isn’t it Commerce that wants White HoDs? That’s right’. So, you’d – it would be a constant kind of reminder.”.

[542] The difficulty that Ronnie faced, and no doubt others who also had “to transform the faculty in ways that achieve social justice and meeting staff and student equity targets”, was how to achieve this objective in a deeply complex and sensitive area without being able to discuss these matters freely and openly.

Put differently, if one cannot have a meaningful discussion on finding practical solutions to implement UCT's transformation policy, it is not possible to achieve its intended outcomes.

[543] Understandably, Ronnie, who was classified "coloured" under South Africa's Apartheid laws, and now self-identifies as "black", found this form of race-baiting offensive. It also contributed to a culture of silence in meetings when others became reluctant to oppose the VC because they too feared being pilloried in this way.

[544] She recalled that shortly after the appointment of Ngonyama as Chairperson of Council, the VC introduced her to the Chairperson as "the anti-transformation Dean".

[545] Several witnesses testified how this culture began to permeate UCT as race was used to silence criticism. Typically, the language used against those with opposing views was that they were "*anti-transformation*," "*racist*" or that their views were indicative of "*institutional racism*."

[546] Ronnie also testified about the way the Chairperson went out of her way to shield and protect the VC, to the point where the Chairperson at one of their LL meetings, informed the meeting that the VC was taking strain and asked the attendees to swear their allegiance to the VC. Ronnie, rightly, viewed this request as "*bizarre*".

[547] One of the other factors that played a role in Ronnie's ultimate decision to resign, was the way Feris' exit was handled, which she described as "*ghastly*". Ronnie testified that the VC inappropriately continued to make snide remarks about Feris for months after the latter had already left UCT.

[548] Ronnie found it increasingly difficult to work with the VC and she believed that the Commerce Faculty bore the brunt of the VC's wrath as a result. She cited two examples: the appointment of a new Head of Department for the College of Accounting instead of A/Professor Goolam Modack, a black male, who had indicated that he wished to step down; and Modack's subsequent application for the post of Deputy Dean for Special and Strategic Projects.

[549] After following due process, Ronnie decided on A/Professor Shaun Parsons, a white male, as the preferred candidate to succeed Modack. One of the aspects that played a major role in her decision was to improve UCT's output of newly qualified accountants. At the time, UCT's accreditation score in this regard from SAICA (South African Institute of Chartered Accountants), was the lowest of all other universities in the country.

[550] Ronnie wrote a detailed report to motivate why Parsons was the preferred candidate. Amongst others, Parsons's track record of academic publications exceeded that of the only other candidate and Ronnie wanted to improve on the research output at the College. She also consulted the outgoing Head, Modack, who supported the appointment.

[551] DVC Lange approved his appointment, but Phakeng refused to endorse it. The VC informed Ronnie that the process was compromised because of Ronnie's consultation with Modack on the appointment of Parsons. When Ronnie queried this, Phakeng responded as follows:

"I don't have to provide you with any rationale for my decision. I can simply say I think your decision-making was flawed and I refuse to endorse this candidate."

[552] Ronnie believed that the failure to make the appointment without good cause, impeded the proper functioning of the faculty. Importantly, her own position as Dean, was also being undermined by the VC. Subsequently, A/Professor Jacqui Kew, was appointed for a two-year holding period.

[553] In the case of Modack, Ronnie requested him to apply for the position of Deputy Dean for Special and Strategic Projects. She testified that Modack, whose abilities she described as *"absolutely fantastic"*, was a thoughtful, analytical person, without whose input the faculty would probably not have survived the Covid-19 pandemic. The post was advertised, but Modack was the only candidate.

[554] The appointment of Modack was approved by the Dean's Advisory Board and the Faculty Board before the required documentation was sent to DVC Lange

and to the VC. Again, Lange approved the appointment, but the VC refused to do so. The matter was resolved when Modack withdrew his application.

[555] Ronnie provided another example of how the VC undermined good governance: the reporting line for the Deans was through Lange, in her capacity as DVC: Teaching and Learning. The VC then initiated one-on-one quarterly meetings with each Dean in April 2020 without notifying Lange, thus effectively undermining Lange's responsibility regarding established reporting lines of the Deans.

[556] The cumulative effect of Phakeng's behavior and conduct, described above caused Ronnie to resign with effect from 31 March 2021, despite her love for the work and the significant financial impact this decision had on her.

[557] Subsequently the Interim VC, Professor Daya Reddy, invited her back to UCT, and she has been appointed in an acting capacity. She was a most impressive witness and is clearly an asset to UCT.

Ms Miriam Hoosain resigns

[558] Hoosain started her career at UCT's Human Resources Department as an Employment Equity Officer in 1999. She became the Head of the HR Information Systems, and thereafter the Head of the Generalist Function in the Faculty of Health Sciences. She was eventually appointed as the ED of HR at UCT on 1 January 2011, a position she held until 1 May 2022.

[559] When Hoosain stepped down from her position as EDHR on 1 May 2022, she was the first person who had agreed to do so in terms of the Executive Transformation Initiative (ETI), which was introduced by Hall and the HR Department in 2022.

[560] Her decision to step down after twenty years at UCT, was the result of untenable governance issues which negatively affected her ability to carry out her mandate as ED HR effectively.

[561] Hoosain testified about an increased politicisation of HR practices at UCT, brought about by the VC. She provided examples of this. The first had to do with the interference on the part of the VC into an HR-related disciplinary matter,

where the VC requested that the suspension of a person, be lifted, based purely on his race, and without any proper reason being provided:

“Perhaps I think I gave two examples of it, but to talk about it in relation to that statement. So, there was a move to ensure that a specific designated group their interests must be met at the expense of HR practice, due process and practice. So, an example that I gave earlier today was as the person charged with suspensions when I – there were questions asked about can we have the race profile of all the suspensions and questions asked about why is it that people of a certain race designation are being suspended disproportionately to – the question wasn’t asked of me. The questions were sent to some of my staff to do a kind of data analysis and then I was contacted by the Head of Employee Relations to say that the one person that I had suspended at the time was a unionist but had actually posed – his actions posed quite a huge risk to UCT where he had basically tried to unionise staff of another organisation who were not employees of UCT and there was a letter of complaint to the VC’s office by that organisation about this person. And so, we followed due process to actually investigate the matter and I suspended him. The Head of Employee Relations then said to me she’s feeling very uncomfortable. The Vice-Chancellor has asked her to retract that suspension and I was concerned about it. I asked on what grounds and the Head of Employee Relations said well, there are no grounds; the VC just doesn’t want you to be suspending this person. And I said I’m very concerned about the precedent it sets. How do we justify suspensions or retracting suspensions if we don’t understand the grounds on which it is done? And then this person said to me she thinks it doesn’t look good for this person who’s Black African and a unionist to be suspended...”

it was just before I think I stepped out of the role. I didn’t follow up with the person. Things were very uncomfortable. You sometimes felt you didn’t want to put your staff under undue pressure to do certain things and I don’t think she ever put it in writing that the Vice- Chancellor had asked her to do that. So that’s an example where things – HR became politicised.”

- [562] Hoosain also testified about a trend that developed where higher than standard remuneration for Black African persons who joined UCT was almost routinely approved by the VC, whereas HR had to struggle to motivate similar remuneration to persons from other designated groups to the VC.
- [563] Another example supplied by Hoosain about the way in which the VC politicised HR functions, was with performance awards. She testified that the VC would consistently insist on an improved performance award for Black African employees but did the opposite if the relevant employee was not Black African.
- [564] Hoosain also referenced another example of how performance awards were used by the VC to control people. She referred to an incident involving the Head of the HR Department's Employee Relations Team, Advocate Barbara Mapara ("Mapara"), who Hoosain described as "*excellent*".
- [565] Mapara was tasked to investigate a complaint against the VC, which made the VC very unhappy. Later, when Hoosain proposed an exceeds award for Mapara at a subsequent performance review, the VC, who was clearly conflicted, reduced the award, stating that Mapara was "*incompetent*", an assessment that Hoosain strongly disagreed with.
- [566] Hoosain testified that this arbitrary and discriminatory form of decision-making based on extraneous factors, made it virtually impossible for her as ED HR to manage the Department, and played a significant role in her decision to leave.
- [567] Hoosain pointed out that in her view, the composition of RemCom was problematic and that steps are required to reduce or fix its current dysfunctionality. She testified that one way of achieving this could be by reducing the number of representatives from Council serving on RemCom and by adding the ED of Finance to the composition thereof, instead, or in addition to, the current finance committee representative, the Chairperson of the Finance Committee.
- [568] Hoosain also testified about the fact that she, as ED HR, assisted the previous Chairperson of Council with the performance reviews of the former VC, Price. However, when Phakeng was appointed as VC, Hoosain was informed that she would no longer be part of this process. Thereafter, no HR practitioners were

involved in the performance reviews of the VC, which resulted in a very perfunctory and superficial process.

[569] Hoosain was not the only witness who raised concerns about the way RemCom functioned. Pillay also testified about instances where the Secretariat of RemCom, a sub-committee of Council, was excused from RemCom meetings in circumstances where they had no potential conflict of interest with the relevant agenda item.

[570] In this regard, reference was made elsewhere in this Report, about how Hoosain and Tainton, the HR representatives who served as the Secretariat of RemCom, were excluded from the RemCom meetings when the performance review of Feris and the NDA of Lange was discussed. This resulted in irregular meetings being held, under a veil of secrecy, with incomplete or no record keeping.

[571] This practice of excluding HR, and particularly Hoosain as ED HR, was alluded to by other witnesses as well. Professor Kelly Moulton ("Moulton") testified that not long before Hoosain agreed to step down in terms of the newly introduced ETI, she became aware of the fact that Hoosain was being excluded from meetings in which HR had a very specific interest.

[572] In summary, Hoosain listed the following factors that influenced her decision to leave UCT: First, she listed several organisational design flaws which impacted on the execution and achievement of transformational imperatives at UCT. These included unclear organisational design and RACI (Responsibility, Accountability, Consult and Inform) frameworks for transformation and employment equity, which impacted negatively on the speed and efficiency of driving these strategies and processes. Hoosain pointed out that recommended improvements to address the sub-par design were not implemented since the outcome of the review in early 2020. Despite support for this recommendation by the COO and HR, a decision was taken by the VC in 2022 to retain the current design.

[573] Second, Hoosain pointed out that there was a significant escalation of internal conflict, especially at senior staff level over the last few years preceding her exit. This required HR to provide unprecedented levels of support on a

continuous basis, to mitigate risk and resolve issues. As a result, HR's focus was diluted and diverted away from efforts towards the achievement of UCT's strategies, aimed at ensuring that UCT retained and attracted the best staff. In addition, there was an increased risk of politicisation of HR practice, which placed an untenable burden on HR to ensure risk mitigation and fair treatment of employees.

[574] Third, Hoosain, like several other witnesses, testified about the weakening of the ED HR role, particularly by the increasing practice of closed governance meetings which excluded HR. This resulted in HR no longer being able to contribute strategically to these meetings or to execute the administrative duties by the taking of minutes for discussions and subsequent decisions at these closed meetings.

[575] The evidence of Hoosain echoes what was said by several witnesses: that the VC, mostly with the assistance of the Chair, was the cause of serious governance instability at UCT.

Ms Judith Du Toit resigns

[576] Du Toit was initially appointed as a Research Assistant and Tutor (Science Faculty) in 1995. In 2009, she was appointed as a Special Project Manager in the office of the former VC, Price. She was appointed as the Director of the Office of the Vice-Chancellor ("OVC") in 2015, a position she held until she took early retirement in January 2023. As Director of the OVC, Du Toit was the primary advisor for that office, and all other structures reported to the VC through her.

[577] Since Du Toit worked closely with both Price and Phakeng, she was able to provide valuable first-hand input about the working environment during their respective tenures. She described Price's leadership style as insightful, strategic, probing, and respectful, and that he allowed, even encouraged, engagement by people and the expression of personal views.

[578] Phakeng on the contrary was far more formal and controlling. She demanded unquestioning support and blind loyalty from those whom she worked with. Du Toit's evidence resonated with several other witnesses about the way in which

people were silenced and bullied by Phakeng. She described the work environment as hostile and aggressive.

[579] Du Toit provided evidence of several instances where Phakeng, attacked and bullied colleagues. At Executive meetings or the LL she would become nasty. She identified incidents where the VC had abused each member of the Executive.

[580] Du Toit emphasised that these incidents were not the result of staff who did not like being held accountable by the VC but were clear instances of inappropriate bullying. Her evidence was consistent with several other witnesses.

[581] Du Toit testified that Phakeng became increasingly involved in personal projects that took time away from her duties as VC, such as securing funding for the Mamokgethi Phakeng Scholarship, which was at odds with her fiduciary duty towards her employer, UCT. She testified that:

“It was really in terms of time commitment. She spent certainly in the last few years she spent a huge amount of time giving lectures and presentations to various bodies, various groupings and this was largely in terms – largely to attract payment for I think predominantly for her Mamokgethi Phakeng Scholarship Fund. So, she had set up the scholarship fund. I’m not sure if she had set it up prior to her appointment at UCT or not, but she contributed some of her own – she often indicated herself that she donated some of her own salary to the fund. She was also very involved in the fund itself and the decisions made with respect to disbursement of funding as I understand. But she spent – would accept many, many appointments for discussions, conversations, talks whereby there would be payments made to the scholarship fund. So, of course it’s a very noble cause, but at the same time it takes time away from duties at the university and it just seemed that more and more – she was spending more and more time doing these kinds of talks.”

[582] Du Toit testified that she never contemplated taking early retirement until 2021, when it became evident that the toxic working relationship with the VC was unlikely to improve. She noticed that she was not the only one who was struggling with Phakeng’s management style. Most of her colleagues became increasingly silent during meetings where the VC was present, which was the

result of witnessing outbursts from her when someone would voice his or her own views. She found this completely at odds with the general ethos and spirit of freedom of expression at a university.

[583] [REDACTED]
[REDACTED] This demotivated her to continue to perform at the high standard she had set for herself and upheld in past years. [REDACTED]

[REDACTED] She turned to the Consultative Forum for Academic Staff Matters for counselling because she felt that she could not approach the Ombud's office without the risk of the VC finding out about it. At this point, the Ombud Report was out and Phakeng was requesting the names of the complainants.

[584] On 27 May 2022, Du Toit applied to partake in the ETI, which was initiated by Hall and HR. Prior to this, she had approached Hall and Hoosain about her intentions. Hall initially reported back to her that the VC supported this. Hall subsequently confirmed to her on Whatsapp and via email that the VC has agreed for her to participate in the ETI project.

[585] Du Toit testified that her application was approved by the Advisory Committee, but she was then advised the VC had to approve finally. Thereafter, Ramugondo told her that the VC had decided not to support it. She was given no reason for the VC's about-turn.

[586] Du Toit then decided to take early retirement. She handed in her notice earlier than the required three months but despite this, no steps were taken to advertise for a replacement. She drafted a handover document for the VC, and indicated her willingness to discuss it with Phakeng, but this never happened. HR did not discuss the reasons for her resignation with her either. She left without any handover meeting.

[587] She testified that the position of a Special Advisor to the VC was created at the end of the tenure of Price. Ramugondo was seconded to this position from the Faculty of Health Science for about a year.

[588] During the transitional period between Price leaving and Phakeng taking over as VC, Price appointed Mr Thando Tsotsobe to assist with the succession planning and promotion of Phakeng to VC.

[589] When Phakeng was appointed, the post of Special Advisor to the VC was made permanent. Phakeng appointed Tsotsobe to this position. She testified that Tsotsobe and the VC had a close relationship. As far as Du Toit was aware, his appointment was made without the post having been advertised. It is unclear what criteria were applied to justify this appointment.

[590] Several witnesses also confirmed that this was not a permanent position that existed before Phakeng's tenure. The roles and responsibilities of Tsotsobe overlapped with those of Du Toit, creating a parallel structure. Phakeng instructed Du Toit to copy Tsotsobe in all the emails, including email about budgets. In this regard she testified that from 2020/2021 onwards:

"There was nothing I was told not to copy the Special Advisor on. It did seem to me very strange that our work responsibilities were beginning to overlap and that on one stage I remember saying to him, it sounds like I'm beginning to report to you."

[591] The impression that was created by Du Toit and other witnesses was that Tsotsobe gradually became the advisor to the VC and the one person she trusted in Du Toit's office, while the rest of Du Toit's office who were responsible for the institution, were marginalised. This resulted in erratic advice from Tsotsobe, who pandered to the personal vicissitudes of the VC, and who gradually assumed a larger-than-life role in the administration of UCT, on behalf of the VC. Du Toit testified that Phakeng engaged Tsotsobe together with her on numerous issues, including sensitive issues such as budgets of the university. When Du Toit left UCT, Tsotsobe started handling the finances of her former office. The risk of having an advisor take over management functions and providing advice without any checks and balances can hardly be overstated.

[592] Moulton also testified that after Du Toit had left, Tsotsobe became the entirety of the VC's support. It seemed unclear to most witnesses how Tsotsobe became

the advisor to the VC and even the lead negotiator in December 2022 negotiations for the salaries of the Executive. Moulit testified that:

“The bizarre rise of Thando to be in the strategic advisor and eventually, to be in the lead negotiation with the academic’s union of last year, is entirely indescribable.”

[593] Du Toit testified that upon her return to her previous position, in April 2023, she discovered that the finances of that office that were handled by Tsotsobe in her absence, were *“a bit of a mess”*.

[594] Du Toit testified that when Pityana was the Chairperson of Council the toxicity in the office of the VC existed already, but it had not reached the tipping point it later would. Du Toit and other colleagues thought of approaching him on the issues, but most still felt like they might be able to cope without his intervention.

[595] When Du Toit was asked why she did not raise it with the then Deputy Chair, Budlender, she said that the situation had not been bad enough at that time. It only became seriously unbearable around 2020/2021 onwards. Had Budlender stayed on in her position, Du Toit said she would have approached her because she had a reasonable relationship with her:

[596] However, when Ngonyama became Chairperson of Council, the working relationships became increasingly difficult and, eventually became completely unbearable. It was difficult for most executive members to know who to trust. There was a working environment that was fueled by the spirit of *“divide and conquer”* and Du Toit testified that she simply did not know who to turn to. She did not think it possible to approach Ngonyama.

[597] In April 2023, Du Toit returned to her former position on a part-time basis at the request of Professor Daya Reddy, the Interim VC.

Professor Elelwani Ramugondo

[598] Ramugondo is the current DVC: Transformation, Student Affairs and Social Responsiveness at UCT, a position that was previously held by Feris. She was permanently appointed to this position on 1 July 2022, after the acting tenure of Hall as DVC came to an end. She served on Council for most of the period

covered by the investigation and joined the Exco with her appointment as DVC. Aspects of her testimony were troubling and are therefore dealt with specifically.

[599] As mentioned earlier, in 2017 Ramugondo competed with Lange for the position as DVC: Teaching and Learning at UCT. After Lange was appointed, Ramugondo contested her appointment in court. In her court papers, Ramugondo accused Lange of misrepresenting her credentials to the Selection Committee. She also alleged that UCT had violated its own policy on Employment Equity and that the appointment of Lange – a “*white female Argentinian*” – contravened UCT’s transformation objectives.

[600] In UCT’s response, it was pointed out that the Selection Committee assessed Lange to have direct and relevant experience for the DVC position, while Ramugondo did not.

[601] Ramugondo’s application was dismissed in the high court in February 2020. Her application for leave to appeal was dismissed in September 2020 and a further attempt to the Supreme Court of Appeal also foundered in December 2020. She appealed to the Constitutional Court, but withdrew the appeal, after arriving at a settlement with UCT in March 2022.

[602] Ramugondo’s personal attacks on Lange did not end with the litigation. Several witnesses testified that Ramugondo disliked Lange.

[603] Her animosity to Lange was described as follows by Manjra:

“Prof Ramugondo had a particular aversion to Prof Lange. And it was simply because they competed for the same position and Prof Lange won the position. So, I mean that continued even afterwards. And I suspect that lots of it, when the Lange issue had become a contentious matter at UCT Prof Ramugondo supported the VC not so much on the basis of the merits of, but because of her aversion to Prof Lange.”

[604] Manjra drew attention to a comment Ramugondo posted on twitter on 18 March 2021, which, he said, demonstrated her dislike for Lange. It read:

“You are a line manager of 7 people. 3 resign, 2 become seriously ill, and one of them dies. Another takes his own life. How do you sleep at night? How do

you justify the fact that the only one who stays strong is the only one of seven who is white?”.

[605] Lange testified that she did not participate on social media and was unaware of the posting until it was shown to her by colleagues. She did not initially understand what it referred to, but her colleagues who read it understood it as a reference to the following persons who reported to her:

- The three resignations referred to Professors Woolard and Ronnie (Faculty of Commerce), and Andrews (Faculty of Law);
- The two persons who left due to health reasons: Professor Soko (Graduate School of Business) and Professor Shay (Centre for Higher Education Development);
- Death: Professor Mayosi; and.
- The white person standing: Professor Lewis (Dean of Engineering)

[606] In a statement on the posting Lange prepared for the Panel, she pointed out that she had eight, not seven, reporting units in her position as DVC. In addition, two of the persons mentioned, Woolard and Shay, are white. However, the number of ‘victims’ added up, which convinced Lange that the tweet referred to her, despite the minor discrepancy about the number of reporting units and racial profile of the ‘victims’.

[607] Several other witnesses also testified that they had understood it as a reference to Lange.

[608] When Ramugondo testified before the Panel, she would have been acutely aware of the possible adverse consequences to her if the statement was indeed found to refer to Lange. When asked to explain the posting, she initially avoided answering:

“So, I find it very interesting that people think that I’m talking about Lis Lange. I was asked this very question during the Selection Committee by one Selection Committee Member. And I asked them, ‘why do you think I’m talking about Lis

Lange? What do you know about what she might have done or not done, that you think I'm posting about her?"

[609] Here, Ramugundo was referring to the Selection Committee that interviewed her for the permanent position as DVC: Transformation, Student Affairs and Social Responsiveness in 2021. It is apparent that one or more members of the Selection Committee also thought that the posting referred to Lange.

[610] If Ramugundo was referring to Lange, it would imply that she was stigmatising a colleague on the ground of her race and being dishonest in her denial about it to the Selection Committee.

[611] The Panel investigated the issue and concluded that Ramugundo's denial was untruthful: First, her explanation to the Panel regarding this issue was improbable. The transcript of her response to questions from the Panel revealed this clearly:

[612] When asked who she was referring to she responded:

"I'm referring to an individual I learnt about in the US ... A colleague shared about what had been happening in their space. It's not fair that I get to be asked whom I'm referring [to]"

[613] Responding to the timing of the posting in the middle of the litigation involving Lange:

"...this question was raised in the Selection Committee. And I asked them why do they think I'm talking about Lis Lange."

[614] When she was asked to be specific about the reference to "You are a Line Manager of seven people", her assertion was that she was referring to someone in the US and that she was not prepared to disclose the name.

[615] She disingenuously stated that the "three who resigned" were "the three that report to that individual in the US" and that she was "not going to say who they are ... because I don't have that privilege from the person who shared the information with me. It's not fair."

[616] On being reminded that she was testifying confidentially and that an adverse inference may be drawn if she refused to disclose the names of the persons to

whom she was referring, she persisted in her refusal: “...I think it’s your prerogative to make that inference. And place Lis Lange unfortunately under unnecessary scrutiny ... because I was not talking about her.”

[617] Not only did she persist in her refusal to provide this information, but she submitted a further obfuscatory statement to the Panel. In the circumstances, an adverse inference against her for refusing to disclose the identity of the “white” person and the other persons referred to in her tweet is justified.

[618] The Panel disbelieved Ramugondo’s evidence that the message referred to a person in the US, whose name she could not divulge without permission. The Panel requested the name to be given confidentially so that her evidence could be investigated. She refused.

[619] It would be a remarkable coincidence that a senior academic and line manager at a university in the US was confronted by almost the same factual situation and at the same time as Lange.

[620] Second, in a subsequent statement submitted by Ramugondo following her evidence, she sought to clarify her evidence in this regard, but instead engaged in sophistry. In amplifying her denial that the tweet referred Lange she explained:

“My tweet deliberately centres on anyone who may be a line-manager, and this can be anywhere...”

My tweet was aimed at encouraging reflection among those who follow and read my tweets; reflection focussed on line-managers and line-managing within organisations that are experienced as racist...

I have had numerous informal, and often confidential conversations with decolonial scholars globally on their own personal experiences as black people or persons of colour in the academy. My tweet is informed primarily by these stories, and a pattern myself and others see recur; one case particularly stood out for me: an exemplar of this global pattern (Emphasis added)...

The Panel will note that in my tweet I mention neither the names of the individuals involved, nor the institution. This was a conscious decision, for I did

not want to personalise the issues, but to allow anyone who is a line-manager or is line-managed, anywhere, to reflect on whether this may apply to them or their context. I also sought to respect the fact that the story I had in mind was shared with me in confidence.”.

[621] She gave the Selection Committee a similar response when probed about the tweet. The report of the Committee dated 5 October 2021 records it thus:

“When probed on the social media post matter, she indicated that as a scholar she often participates in thought-provoking conversations with her peers worldwide. In some instances, she starts these conversations so as to understand the various views of her counterparts. She further emphasised that in all her social media inputs, she ensures that no reference is made to the name of any person.”.

[622] She further states that her tweet was informed by other stories, suggesting that it did not refer to a specific case, but then adds that *“one case stood out”*, which is the clearest indication that she had one set of facts in mind. In our view this could only have referred to Lange.

[623] It is evident that the tweet referred to Lange specifically and that Ramugondo posted it to denigrate her in the knowledge that the UCT community would be aware to whom she was referring.

[624] That being so, Ramugondo was untruthful when she assured the Selection Committee that her tweet did not refer to Lange. It is highly unlikely that she would have been appointed had this fact been known. In the light of this finding, it behoves UCT to take disciplinary steps or pursue other legal action against her. Ordinarily the non-disclosure of a material fact in an application for employment, or a deliberate lie during an interview would constitute grounds for a termination of employment.

[625] The finding concerning Ramugondo’s demonstrable personal dislike for Lange and her conduct in posting an offensive tweet about her places her role in the events following Lange’s termination in a different light to that of someone who merely supports one viewpoint instead of another.

[626] In the Special Council meeting of 6 October 2022 and subsequent Council meetings, which ultimately succeeded in appointing an independent panel to investigate the circumstances of Lange's termination, Ramugondo did not recuse herself, despite her conflicted position in relation to Lange. She allied herself with Phakeng and Ngonyama, when she must have been aware that they too were conflicted. She then consistently voted against the motion for the appointment of an independent panel on the baseless ground that it was *"symptomatic of a culture of institutionalised racism."*

[627] Equally concerning were the attempts by Ramugondo to defend Lushaba's offensive and racially loaded language to stigmatise those with whom he disagreed at these meetings, stating that his conduct was not offensive, because, in her view, he did not *"incite violence."* As was pointed out, Ramugondo's views are not only wrong and contrary to Council's Code of Conduct, but are a cause for serious concern, particularly because she occupies the sensitive post of DVC of Transformation at UCT tasked with building inclusiveness.

[628] A second example of Ramugondo's clear bias in favour of the VC and against Lange, is found in her evidence to the Panel regarding her statement that *"it is mostly black African South African women who seem to become casualties to events that have followed the Senate meeting of 30 September 2022..."*.

[629] In this regard, responding to a proposition from the Panel that her testimony amounts to an assertion that, *"absent a proper justification for instituting these processes, it is fair [to] presume that all actions are presumptively racist unless there is clear evidence to the contrary"*, she answered incoherently:

"Ja, because I've never seen anything like it. Since 1998 as an academic I've never seen someone brought into an interrogation without having been answerable to start off with."

[630] Ramugondo conceded, in response to questions from the Panel, that if the proven facts show that the Chairperson of Council was guilty of misconduct, her assertion that the Chairperson was a victim of structural racism would not hold. In the light of our factual findings against Ngonyama, Gwangwa and Phakeng, it follows from her own evidence that her thesis has no merit.

[631] Ramugondo testified that there were no grounds to investigate Phakeng. She came to this conclusion because Senate decided to appoint a sub-committee to investigate whether the VC misled Senate in circumstances when the VC *“had never addressed Senate on Lis’ departure”*.

[632] Ramugondo’s evidence in this regard was simply untrue. The VC did address Senate on 10 June 2022 and provided her version on the Lange exit, which we have considered earlier. Ramugondo attended the Senate meeting of 10 June 2022, and she also co-chaired the Senate meeting of 30 September 2022, where the minutes of 10 June were approved. It is, therefore, improbable that Ramugondo was unaware that the VC had addressed Senate on the Lange exit.

The Findings Correlated with the Revised Terms of Reference

[633] Clause 4a of the RToR requires the Panel to investigate:

“The circumstances surrounding the resignation or retirement of members of the executive including DVC’s, deans, directors and other employees linked to the senior leadership, with the specific purpose of finding out whether executive relations and the failures of governance within the Council, its offices and structures contributed to this” (Emphasis added).

[634] The main findings regarding the circumstances of the retirement and resignations of the persons identified required by Clause 4a are summarised below. This is followed by an identification of the failures within Council that contributed to this.

[635] The Panel received a list of all the *“resignations and retirements”* that fell within its mandate for the period January 2018 from the COO/Registrar. It is attached as Annexure “M”.

[636] The Panel investigated the circumstances of the resignations of Feris and Ally in 2021; Lange, the Registrar and Morar in 2022. They all served on the Exco. Their resignations were directly attributable to the conduct of the VC and multiple governance failures of Council. Hoosain’s resignation as the ED of Human Resources Department (HR) in 2022 was linked to the increasing difficulty faced by HR to mitigate the risks to UCT posed by deteriorating

executive relations and governance failures. Du Toit gave notice of her termination at the end of 2022 and left in January 2023.

[637] The Panel also investigated the circumstances of Kruger's suspension by the VC in 2022. Kruger was the ED of the Communications and Media Department (CMD) and attended Exco meetings at the time of her suspension. She remains suspended and her departure from UCT is being negotiated. Her suspension fell within the terms of reference.

[638] The Panel investigated the circumstances of Ronnie's resignation in 2021. She was Dean of the Commerce faculty. Her resignation in 2021 also resulted from VC's conduct and a climate that was created was hostile to free and open discussion.

[639] All the individuals referred to above either experienced or witnessed systematic abusive conduct by the VC, which directly or indirectly contributed, to their decisions to resign or retire prematurely. The conduct, which created a toxic work environment, is detailed in the Report. It included, as Morar described:

- abrasive behaviour;
- public belittling and humiliation;
- false accusations, mistrust, insecurity and endless baseless accusations of trying to undermine, unseat or sabotage her role;
- authoritarian leadership under the guise of ...holding people accountable;
- differential treatment of colleagues where for a similar event, a colleague who differed with her was publicly castigated, disrespected and belittled, while one of her 'supporters' was not;
- increasingly building her power through patronage that 'borders on class, gender and racial stereotyping';
- Inability to accept that leadership is about leading and being led; and
- Inappropriate social media presence.

[640] Specific findings regarding the circumstances of each of the affected individuals are summarised below.

Professor Loretta Feris

[641] In regard to Feris' termination in April 2021 the Panel makes the following findings:

- I. Ngonyama, through RemCom, improperly initiated the termination of Feris' contract; She had no authority to be involved in a matter involving the termination of a DVC's contract as this was the responsibility of the VC;
- II. The RemCom meeting where this decision was taken was conducted irregularly by requiring the service officer, Tainton, to leave the meeting so that there was no minute of the meeting;
- III. RemCom had no delegated authority to decide or make recommendations on the performance assessment of Feris; it acted irregularly in either deciding to amend her performance assessment or causing it to be amended from "meeting" to "not meeting;"
- IV. The VC acted unlawfully by denying Feris the right to answer the adverse comments about her performance to RemCom; Feris persuasively refuted the VC's adverse comments in her statement to the Panel;
- V. Feris had little option but to terminate her contract as her work environment had become intolerable. She signed an NDA, which Ngonyama directed on behalf of UCT;
- VI. Feris was the victim of an abuse of power, often in the presence of others, by the VC over a protracted period of more than three years. In her case the VC particularly baited and unfairly discriminated against her on the ground of her race, insisting that she was "coloured," and not Black;
- VII. Ngonyama too, behaved unprofessionally by berating Feris in a Council meeting, shortly before initiating her removal; and
- VIII. Council, through its most senior officials, failed in its duty to take reasonable steps to prevent the abuse and act on it. Feris was effectively constructively dismissed.

Associate Professor Lis Lange

[642] In regard to Lange's termination the Panel makes the following findings:

- I. Ngonyama initiated Lange's termination on 3 January 2022. As Chairperson of Council she had no authority to do so;
- II. Lange had no option but to negotiate her termination with the HR Department represented by its ED;
- III. Between 13-16 March 2022 Hall, on behalf of and in consultation with Phakeng and Ngonyama, and assisted by the ED of HR, finalised the terms of the NDA, which Lange signed on 17 March 2022;
- IV. On 17 March Ngonyama informed RemCom of Lange's impending departure. It was understood that the VC would sign the NDA only after Senate had decided on the VC's renewal of her term on 22 March 2022. There was no record of the discussion as the HR service officers were asked to excuse themselves from the meeting;
- V. On 22 March 2022, Ngonyama made the case for the renewal of the VC's term for a further five years at meeting of Senate. She made no mention of Lange's impending departure, the extent of executive dysfunction, or the persistent misconduct of the VC. In so doing she misled Senate and secured its approval to grant the VC another term;
- VI. Phakeng signed the NDA on 20 April 2022;
- VII. On 4 May 2022 Phakeng falsely informed the Commerce Faculty Board that Lange's decision to terminate her contract was voluntary and personal and that she had no part in it;
- VIII. On 6 May 2022, at a Special Council meeting, Ngonyama presented a false version of Lange's departure. She stated that in March 2022 Lange approached her through HR about her intention not to pursue a second term as DVC; Ngonyama asked her to approach the VC; she wanted to leave in March but RemCom could only process her request in April, Lange's reasons for leaving were personal;
- IX. On 10 June at a Senate meeting, in response to questions posed by Professors Moultrie and Williams regarding the circumstances of Lange departure, Phakeng again repeated the falsehood that Lange's reasons for

leaving were “*personal in nature*”. She then added, also falsely, that she had approached Lange and asked her whether she wished to seek a second term as DVC and that Lange indicated that she did not;

- X. On 23 September 2022, in a written answer to questions posed by Moultrie and Williamson for the Senate meeting on 30 September 2022, Ngonyama gave another false version, which was that Lange wished to leave for personal and confidential reasons; that she had submitted her proposal to Human Resources on 17 March 2022; and that, at the time when she (Ngonyama) had addressed Senate regarding the motivation for the renewal of the VC’s contract for a second term on 22 March 2022, “*the matter was still with Lange and the VC*”;
- XI. On 29 September 2022 Lange wrote to Senate refuting Ngonyama’s version emphatically insisting that she had no personal reasons for leaving;
- XII. On 30 September 2022 Senate appointed an ad-hoc committee to investigate the divergent accounts of Lange’s departure;
- XIII. Between 1 and 5 October 2022, Ngonyama called Hoosain to support her falsehoods. Hoosain insisted that Ngonyama was not telling the truth;
- XIV. On 6 October 2022 at a Special Counsel Meeting Ngonyama recused herself as Chairperson of the meeting, but remained and voted, as did Phakeng, to defeat a motion to appoint an independent panel to investigate the circumstances of Lange’s departure, despite being conflicted. The Deputy Chair, Gwangwa, who was also conflicted, presided over the meeting and also voted to give the opponents of the motion a single vote majority;
- XV. Later, at the same, meeting, Ngonyama presented another false version – her third – regarding the circumstances of Lange’s departure. She said that she met Lange on 3 January 2022 as part of her consultations with senior executives on the renewal of the VC’s term of office. Lange became abrasive and expressed her ambition to succeed the VC. She then referred the issue to HR and the VC to resolve the problem. When she addressed

the Senate on 22 March 2022, the VC had not yet briefed her on the outcome of their discussions;

- XVI. Shortly before midnight on 6 October 2022, Gwangwa published a one-sided, inaccurate statement of what had transpired at the meeting on UCT website. The statement included Ngonyama's third untruthful version. The statement was published without the Registrar's concurrence;
- XVII. On 7 October twelve members of Council issued a statement distancing themselves from Gwangwa's statement on the grounds of its inaccuracy; and
- XVIII. Between 15 October and 17 November 2022 Council met on several occasions. It rescinded the earlier decision of 6 October 2022 not to appoint an independent panel and voted to engage one. It also approved terms of reference. Phakengs supporters, in particular Dr Lushaba, who was joined by Professor Ramugondo, attempted to discredit the idea of an independent inquiry. Lushaba falsely called the decision a "*racist attack*" against the Phakeng and Ngonyama. Ramugondo added that what was happening to the three Black women, Ngonoyama, Phakeng and Gwangwa was evidence of institutional racism. There was no evidence to support these allegations.

Dr Russel Ally

[643] In regard to Ally's resignation the Panel makes the following findings:

- I. With Feris' impending departure early in 2021, the VC approached Ally to make himself available to act in her position. He agreed and anticipated being appointed Acting DVC Transformation;
- II. Shortly before the Council meeting to approve the appointment he learnt that Professor Martin Hall would be nominated for the position;
- III. Ally asked the VC to clarify the position. She told him that the Chairperson of Council had "*overruled*" her by nominating Hall instead;
- IV. Ally then asked Ngonyama for an explanation. She said that she had no role in the matter and that it was the VC's decision;

- V. However, Hall had attended what he regarded as an interview with Ngonyama and Pheladi Gwangwa;
- VI. Faced with their conflicting versions, which Ally regarded as duplicitous, he felt he could not trust in their leadership;
- VII. He also disagreed with their decision to appoint a “*retired white male*” to the position. He was not justified in this view as the evidence indicated that Hall was suitably qualified to be appointed;
- VIII. Council was presented only one name – Martin Hall’s – and approved the recommendation; and
- IX. We find that Ally was justified in believing that he could not trust the VC and the Chairperson because they were not truthful with him. This was the dominant reason for his resignation. He also signed an NDA.

Ms Gerda Kruger

[644] In regard to Kruger’s suspension the Panel makes the following findings:

- I. Kruger was suspended as ED of CMD by the VC on 11 May 2022. She is in the process of negotiating the terms of her termination with UCT;
- II. She was also the victim of the VC’s antagonistic behavior from the very onset of her appointment as VC. She found it difficult to manage the risks that the VC’s inappropriate and sometimes incendiary social media presence posed to UCT;
- III. The VC suspended Kruger after the CMD had prepared complimentary farewell brochure for Feris following the announcement of her resignation;
- IV. The publication as a VCDESK contained collated information about Feris’ contribution to UCT. And had a colour photograph of the VC alongside the tribute to Feris. The publication cost R5000 to produce. Very few copies were made;
- V. When Phakeng saw it she became very angry. Kruger’s attempt to calm her down was by apologising profusely were in vain;

- VI. The publication was in fact a replica of the publication that the VC herself had approved and is available on UCT's web page;
- VII. Kruger then faced several charges that: she had no authority to make the publication; she did not inform the VC about the publication; and that she used the VCDESK in the publication without the VC signing off on it;
- VIII. We find that the charges were petty, unfounded and instituted for an improper purpose. It was driven by VC's dislike for both Feris and Kruger;
- IX. Subsequently the VC, in her capacity as CEO of UCT, defamed Kruger in the media by falsely stating Kruger had "*forged her signature*", which was a reference to the publication in the VC's name, that she has been "*found guilty of gross misconduct*"; that she was "*untouchable because she is a white person*"; and that she had "*acted unethically*";
- X. Kruger subsequently lodged a grievance against the VC for these defamatory statements, but UCT never proceeded with it; and

[REDACTED]

[REDACTED]

Mr Royston Pillay

[645] In regard to Pillay's resignation the Panel makes the following findings:

- I. Pillay, the Registrar, resigned on 2 December 2022;
- II. His resignation was the result of the "*intolerable, accusatory relationship*" with the VC, which, "*no self-respecting person*" would take;
- III. He believed that the dilution of institutional governance posed an institutional risk to UCT and a professional risk to him personally; and
- IV. One example of the kind of risk he was concerned about was the VC's improper instruction to him to approach the editors of media houses to disclose the names of persons who were leaking information to the media about the events at UCT. He, correctly, refused to execute the instruction.

Dr Reno Morar

[646] In regard to Morar’s resignation the Panel makes the following findings:

- I. Morar was the COO of UCT, and also resigned in December 2022;
- II. The reasons he gave for his resignation were similar to the others mentioned earlier, regarding the adverse consequences of the VC’s unprofessional behaviour; and
- III. He also felt he that had little choice but to resign even though he would suffer significant financial harm as a result.

Professor Linda Ronnie

[647] In regard to Ronnie’s resignation the Panel makes the following findings:

- I. Ronnie was the Dean of the Commerce Faculty and resigned at the end of March 2021, at the same time as Feris. As a Dean she was not a member of the Exco, but attended meetings of the Senior Leadership Group;
- II. Her reasons for resigning are outlined in our assessment of her evidence. In her case too, the VC’s unprofessional behavior and her race-baiting contributed to her resignation;
- III. She was troubled by how the VC brooked no dissent in meetings, was hypersensitive to criticism, silenced debate on important issues, and stigmatised her as the “*anti-transformation Dean*”;
- IV. The VC treated the Commerce Faculty unfairly and improperly interfered in its decisions to make senior appointments because of her increasing antagonism for Ronnie; and
- V. Finally, what precipitated her decision to leave was the “*ghastly*” way in which she believed that Feris was dismissed.

Ms Miriam Hoosain

[648] In regard to Hoosain’s resignation the Panel makes the following findings:

- I. Hoosain was the ED of the HR Department and decided to leave when the introduction of the Executive Transformation Initiative made it possible to leave earlier in May 2022;

- II. As the ED of HR she was at the coal face of almost all the issues that arose in this inquiry, including terminations, performance assessments and disciplinary issues. Her evidence was illuminating and also very troubling;
- III. She observed the increasing politicisation of the HR function, at the VC's behest, which she believed posed a serious risk to UCT. By this she meant that good HR practices were compromised to serve the VC's 'political' interest in making appointments, granting or refusing performance awards and disciplinary processes. These decisions were made improperly on a racially discriminatory basis;
- IV. Ultimately there were several factors that caused her to leave. These included: the EDHR increasingly being excluded from meetings where her presence was necessary, the practice of having closed meetings where there was no record, the increasing escalation of internal conflict, the unfair treatment of employees, the burden of HR and the risk to UCT; and
- V. Her departure was a serious setback for UCT.

Ms Judith Du Toit

[649] In regard to Du Toit's resignation the Panel makes the following findings:

- I. Du Toit served as Director in the OVC, first with Price and then Phakeng. She resigned towards the end of 2022, and left in January 2023;
- II. She witnessed the VC attacking and bullying her whole Executive team, examples of which she described in her evidence earlier in this Report and the deterioration of its functioning, and an increasing culture of silence in meetings. This, she asserted correctly, was contrary to the ethos of a university where freedom of expression ought to flourish;
- III. Du Toit never contemplated taking early retirement until 2021, when it became evident that the toxic working relationship with the VC and her authoritarian and erratic management style were unlikely to improve;
- IV. The VC's management style included taking advice from an inexperienced Tshotsobe she appointed as a high-level Special Advisor, and marginalising

Du Toit and others in the VC's Office who had the responsibility for its management, thus posing a risk UCT's governance;

V. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

VI. She did not seek help from the Ombud office because of the risk of the VC finding out. At this point, the Ombud Report was out and Phakeng was trying to find the names of the complainants;

VII. When she resigned, there was simply no one to turn to, because relationships under Ngonyama's leadership of Council had become so divisive that no one could be trusted; and

VIII. When she finally left she was not asked by the VC or anyone in HR to explain her reason for taking early retirement, nor was the VC interested in discussing her "hand-over" Report with her.

Governance Failures

[650] As set out in Clause 3 of the RTOR:

"The purpose of the inquiry shall be primarily forward looking although, based on its findings, the Panel is authorised to recommend redress where warranted. The Panel is thus authorised to make recommendations that could help Council and the University to prevent and better address any of the failures of governance the Panel finds.". (Emphasis added).

[651] Institutions flounder if those who bear the mantle of leadership and management of the institution do not have the gravitas, knowledge and experience for the role with which they are entrusted. Had Council, in partnership with Senate in UCT's dual governance structure, fulfilled its governance role properly, the events that unfolded and emotional trauma to many individuals could have been avoided.

[652] Notwithstanding individual efforts, in the face of clear evidence of an abuse of power its most senior office bearers, Council failed as a collective to act

decisively on the evidence presented to it. This resulted in an infringement of the fundamental rights of individuals, and eroded the very foundation of a harmonious and equitable learning environment;

[653] Council failed in its fiduciary responsibilities, on numerous scores, to act at all time in the best interests of UCT. There was much evidence of Council irregularly involving itself in day to day management, rather than focusing its attention on governance and accountability based on UCT's strategic plan.

[654] The testimony of witnesses points to a need to constitute the membership of Council in a more deliberate manner and befitting a university, rather than a corporate entity. There was little evidence of Council applying its mind to the benchmarks which should serve as hallmarks for good governance at a higher education institution. These include:

- Placing the foundational provisions of the Constitution, particularly human dignity, the achievement of equality and non-racialism at the centre of its governance ethos;
- Inclusive decision-making and valuing the diverse perspectives of stakeholders within UCT;
- Regular assessment of the strategic plan to ensure that it is relevant and responsive to the rapidly changing environment;
- Promotion of academic freedom, critical thinking and pursuit of knowledge without interference;
- Transparency and accountability with clear reporting and open access to information, holding leadership accountable for their decisions and actions;
- Commitment to and demonstration of the highest standards of professional ethics, integrity and collegiality; and
- Through stakeholder engagement impacting positively on societal discourse and development.

[655] Good governance and accountability are the essential pillars of UCT's success and reputation. Without these, conditions were created for conflict related to

diversity, equity and inclusion resulting in unprofessional conduct and bullying. A new culture is needed of respectful dialogue, empathy, fairness and equity.

[656] Regrettably the numerous governance failures by Council, including its offices and structures, contributed directly or indirectly to the resignations and retirements of the relevant officials.

The Pityana Council.

[657] The recommendation of the Selection Committee to appoint Phakeng as VC despite clear evidence of her inability to lead and manage senior executives was ill-considered. Pityana's assurance that the risk would be ameliorated by engaging a coach to support her was similarly short-sighted; it was not workable, added to her insecurity and caused her to be resentful.

[658] Pityana's other assurance to the Selection Committee and to Council that he would "*manage*" her closely also did not materialise. He left much of this responsibility to Budlender, and took no firm steps to deal with the mounting evidence of Phakeng's mismanagement, which Budlender repeatedly brought to his attention.

[659] When Council appointed the Omar-Rousseau-Davids Committee to inquire into the VC's fear that Pityana and some members of Council were conspiring to remove her, it found no evidence of this, but went no further. Hamstrung by its unclear mandate, the Committee's Report sought to smooth over the tensions that had arisen with her leadership and management, instead of confronting the problem directly.

[660] As the Pityana Council's term came towards an end it was confronted with the Ombud Report, which identified confidential complaints against the VC. Pityana and his Council, must have realised the complaints had some substance. Yet they failed to act on the information contained therein, leaving many members of staff vulnerable to further abuse of power. Worse Pityana and Professor Zinn then sought to shift part the blame for Exco's dysfunction on Exco members themselves. They did so in a report prepared for Council in which they suggested that four members of Exco had clubbed together and

caucused positions which undermined the VC's leadership. The suggestion had no merit.

[661] In the second quarter of June 2020, when the Pityana's Council's term was coming to an end, the problem with the VC's leadership had become so serious and the risk to UCT manifest, that something had to be done. This was evident from the fact that the Executive had become dysfunctional as a consequence of the VC's unprofessional behaviour.

[662] It is evident that Pityana and the Council he led were not willing to act decisively against the VC, which their fiduciary duty required. At this stage there was no other solution to the problem. Instead, they saddled the incoming Council with the problem. The source of the resignations and retirements of Executives in the Ngonyama Council had its genesis in this failure.

The Ngonyama Council

[663] It became apparent soon after Ngonyama was elected as Chairperson of Council in July 2023, that her strategy for dealing with executive dysfunction was to give the VC unqualified support instead of holding her to account. The ill-conceived strategy involved suppressing the allegations of bullying against the VC in the Ombud Report and appointing the BOP to support the Exco. Ngonyama participated in and directed the work of BOP making a mockery of her role as an office bearer of council responsible for holding the VC to account.

[664] Soon after the BOP began its work Ngonyama improperly initiated the terminations of Feris and Lange without good cause. As Chairperson of Council she had no authority to do so as she was not their manager. In both cases RemCom was enlisted, outside its delegated authority, to support these terminations.

[665] In between their terminations Ally resigned, primarily because both the VC and the Chairperson had been dishonest with him. The three signed NDA's which was unusual.

[666] A huge governance problem had thus emerged as the Chairperson of Council stepped outside her governance lane and took over management and executive functions contrary to the governance framework outlined at the

beginning of this Report. This included requiring some senior officials, who report to the VC, to also report to her. Hall's experience was a case in point.

[667] Harrison was appointed to serve as acting VC during September 2022 to January 2023, while Phakeng was on sabbatical leave. She found "*multiple chains of command*" within UCT making her role complex and difficult.

[668] For practical purposes Exco was barely functional when Ngonyama astonishingly proposed that Senate extend Phakeng's term for another five years in March 2022. Ngonyama and Phakeng then misled UCT by withholding information regarding the extent of the deterioration of executive relations and the true reasons for Lange's departure. Worse, they enlisted the support of Council members in an attempt to suppress an independent investigation into their conduct.

[669] With the two most senior office bearers in UCT having effectively gone rogue other members of Exco began to plan their departures. By December 2022, Harrison was the only member of the Exco from July 2020, who had not resigned.

[670] To conclude that Ngonyama and Phakeng's conduct during this period amounted to a governance failure would be understatement. In an attempt to shield themselves from accountability they subverted the policies and procedures (identified below) of UCT. Had it not been for the fact that half of the members of Council and most in Senate acted to protect UCT from their machinations the consequences could have been calamitous.

Unfairness, breaches of labour law, UCT statutes, regulations and policies

[671] Having described the circumstances surrounding the retirement and resignation of the persons concerned, the impact of the deterioration of executive relations and the governance failures that contributed to this in answer to the question posed in 4a of the terms of reference, reference is made to Clause 4b, which empowers the Panel to advise on unfairness, breaches of the labour law, of UCT statutes, its regulations and policies which took place. The following are

instances of prima facie prohibited conduct that took place. They are not exhaustive of the breaches of law and policy that occurred.

[672] Feris' contract was prima facie irregularly, improperly, unfairly and unlawfully terminated. It was irregular because the Chairperson of Council and RemCom had no authority to amend the Feris' performance assessment. It was unfair because she was not given an opportunity to answer the adverse comments of the VC regarding her performance assessment. It was improper because it was used to achieve an ulterior purpose, i.e. removing her because of her conflict with the VC. And, it was a breach of labour law because she was effectively constructively dismissed;

[673] Lange's contract was, similarly, prima facie irregularly, improperly, and unlawfully terminated. It was also done irregularly because it was initiated by the Chairperson of Council who had no authority to do so. It was improper because it was also used to achieve an ulterior purpose which was to remove Lange from Exco. The Chairperson of Council acted unlawfully, violating her right to equality by threatening that her term as DVC would not be renewed if the VC did not want her and advised that she wished to appoint an African DVC in her place. Lange was left with no option but to negotiate the termination of her contract. As with Feris the facts are consistent with a constructive dismissal;

[674] UCT, acting first through the Deputy Chairperson of Council, and then the VC, breached the NDA by publishing defamatory public statements of and concerning Lange;

[675] At least four members of Council, including the Chair, Deputy Chairperson (Gwangwa), Phakeng and Ramugondo, breached Council's Code of Conduct, particularly its conflicts of interest policy, by participating and voting in meetings concerning the Lange dispute in which they had a personal interest;

[676] The Chairperson (Ngonyama) and the VC breached Council's Code of Conduct, by not adhering to their duty to always act in the best interests of UCT, by engaging in disreputable conduct: including failing to act in good faith, honestly, truthfully and for a proper purpose; not improperly use their position as Council members to gain an advantage for themselves or someone else;

[677] Phakeng repeatedly conducted herself unprofessionally by engaging in activity that is prohibited in the UCT workplace, including using threats, intimidation, ethnic slurs, personal insults and also posting racially offensive material on social media;

[678] Phakeng suspended Kruger without good cause in breach of labour law and UCT's policies;

[679] UCT breached Kruger's right to have her grievance against the VC dealt with expeditiously following the VC's defamatory public statements against her;

[680] Ramugondo, similarly posted racially offensive material referring to Lange on social media and then dishonestly denied that she had done so, first to the Selection Committee which interviewed her, and later when she testified under oath to the Panel;

[681] Dr Lushaba breached Council's Code of Conduct by using threats, intimidation, ethnic slurs, personal insults and generally conducting himself in a racially intolerable and disruptive manner during Council meetings; and

[682] The threat by the Chairperson of Council (Ngonyama), purporting to act on behalf of Council, to institute disciplinary proceedings against the Ombud arising from her having publicised the Ombud Report containing the bullying allegations against the VC, was unlawful. The publication of the Report was legally protected as "*protected disclosure*" within the meaning of the Protected Disclosures Act 26 of 2000.

Recommendations on Governance

In regard to Governance the Panel makes the following recommendations:

- I. UCT must revert and adhere to the demarcation between Council's responsibility to govern and the VC's duty, as chief executive officer, to provide academic leadership as Chairperson of Senate, and manage the institution on its behalf in accordance with law and policy. This is in accordance with the s 27 of the Higher Education Act of 1997 (the Act) and s 7(1) of the Institutional Statute (IS). The distinction between governance and management became blurred and compromised the governance of UCT;

- II. Council, collectively, is responsible for good order and governance, the mission, financial policy, performance, quality of education and reputation of UCT⁵. UCT should review its Council nomination and selection process to ensure that members of Council collectively meet the requirements of the Higher Education Act 101 of 1997, as well as requirements appropriate for a higher education institution, for good governance as set out in relevant statutes and the King IV Code;
- III. All members of Council must have the requisite skills to fulfil their governance responsibility and must be properly inducted. This includes understanding the policies of UCT, how it is governed and Council's Code of Conduct;
- IV. In appointing the VC and DVCs of UCT, Council should review its assessment and selection process to ensure that the candidate has the knowledge and experience for the position and is selected properly. This requires an objective, integrated and professional evaluation process encompassing competency, leadership qualities and personality assessment to ensure that candidate selected embodies the leadership acumen and personal attributes, in addition to the necessary competency, to lead a globally recognised prestigious university;
- V. Several key functions of Council are qualified by its obligation to consult Senate when it appoints academic staff, or decides language or admissions policy (S12, IS). Section 28 (1) of the HEA makes Senate accountable to Council for academic and research functions. The Senate is, in terms of s 22 of the IS the final authority for a range of core academic functions. S 26(1) of the IS specifies that the VC is the chairperson of the Senate and is accountable to Senate in respect of these functions. So, unlike the corporate organisations, therefore, universities have a dual governance structure, shared between Council and Senate, which was not recognised in the manner the previous Chairperson and VC engaged with Senate, particularly in regard to the termination of Lange's DVC

⁵ *Guidelines for Good Governance Practice and Governance Indicators for Councils of South African Public Higher Education Institutions, Department of Higher Education and Training, 2017*

contract. Council must understand and give effect to this dual governance structure.

- VI. Where Council delegates or assigns any of its functions to a structure of Council in terms of s 12(4) of the IS, as it did with RemCom, the structure must perform these functions strictly in accordance with its delegation or assignment;
- VII. The practice that developed where “*sensitive*” issues were discussed in RemCom meetings, and elsewhere within the structures of Council, in the absence of service officers or other officials, where no proper records were kept, must be stopped forthwith. The failure to keep records undermines accountability and is antithetical to good governance;
- VIII. The HR function was degraded and misused by the VC and the Chairperson of Council (Ngonyama) to advance their own interests, instead of UCT’s. It was enlisted to terminate the contracts of senior executives unfairly, placing the UCT at risk. There have also been instances where appointments appear to have been made and performance awards granted, which were undeserved. The HR Department must function strictly in accordance with good HR practice and protect the interests of both UCT and staff. Again, proper records must be kept of all important HR decisions;
- IX. During the period under investigation there were multiple instances of violations of the Code of Conduct by members of Council. There was not a single instance we are aware of where the Code was enforced against anyone. Council must enforce its Code against errant members if it is to govern effectively:
- X. Council is required to implement and enforce all its policies including its anti-bullying policy and its social media policy.
- xi. The Ombud plays a critical role, independently and confidentially, in addressing “...concerns and problems raised by any member of the university community...”. In reviewing the terms of reference of the Office of the Ombud, UCT should ensure that the mandate is carefully crafted to avoid interventions in disciplinary processes and grievance procedures.

Recommendations regarding specific individuals:

In regard to specific individuals the Panel makes the following recommendations:

- I. Ngonyama's conduct in failing to perform her fiduciary duty to UCT and must be reported to the appropriate regulatory authorities. Her conduct, which placed UCT at risk included, but was not limited to, initiating the termination of Lange's contract without having the authority to do so, misleading Council and the Senate regarding the circumstances of her departure, attending and voting at a Special Council meeting despite having a conflict of interest and attempting to prevent the appointment of an independent panel to investigate her conduct by subverting the proper functioning of Council;
- II. Council must institute disciplinary proceedings against Gwangwa for breaching its Code of Conduct by failing to recuse herself from one or more Council meetings in which she had a conflict of interest, and, thereafter ruling that the VC and the Chairperson of Council were entitled to vote on a matter where they were manifestly conflicted, thus demonstrating clear bias or gross incompetence on her part. In the event that she resigns from Council and avoids a disciplinary hearing, her conduct should be reported to the Legal Practice Council;
- III. UCT must institute disciplinary proceedings against Ramugondo for having posted a racially offensive message regarding Lange on social media, and then untruthfully denying to a Selection Committee and to the Panel under oath that the message referred to Lange; and
- IV. Council must institute disciplinary proceedings against Lushaba for violating its Code of Conduct by using racially offensive language in one or more Council meetings.

Remedies for individuals who were wronged by UCT

In regard to individuals wronged by UCT, the Panel makes the following recommendations:

- I. A written public apology must be made to Feris, Ronnie, Ally, Lange, Hoosain, Morar, du Toit and Pillay for the circumstances giving rise to their resignations and commending them for their meritorious service to UCT;

- II. A written public apology must be made to Kruger for her unlawful suspension and the publication of defamatory material about her in the media and commending her for her meritorious service to UCT;
- III. UCT must write to the previous Ombud, Makamandela-Mguqulwa, commending her for her meritorious service to UCT and compensate her in full for the legal costs incurred in respect of the abandoned disciplinary action against her;
- IV. A written public apology, published on UCT's website, must be made to the 37 anonymous complainants, which includes surrogate complainants, referred to in the Ombud Report for failing to act on their complaints. In addition, UCT must make available, at its expense, a counselling service for any complainant who experienced bullying by the erstwhile VC;
- V. Feris and Lange must be compensated in full for the legal expenses incurred to protect their rights;
- VI. Kruger must be compensated in full for the legal expenses she incurred pursuant to her suspension and her grievance against the VC. [REDACTED]
[REDACTED]
[REDACTED]; and
- VII. Those Members of Council and Senate who endeavoured to act at all times in the best interests of UCT, including Budlender who resigned from Council after many years of service because of the way the Ombud Report was handled, are commended. Council must write to Budlender, commending her for her service to UCT.

Conclusion

[683] UCT has been through a difficult period over the past five years. However, there were many courageous people who resisted and defended it from further deterioration. They include members of Council and the Senate. Many testified before the Panel fearing risk of repercussion. What was at stake was not only the future of UCT but the principles of good governance, fairness and non-racialism in one of our great public institutions. In the end UCT stood its ground, confronted the corrosion of its governance and can now move on by restoring public confidence in it. The Panel thanks all who contributed to this endeavour.

