

**CLOSING REPORT OF THE PUBLIC PROTECTOR ISSUED IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 READ WITH SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994**



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**INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION RELATING TO THE DECISION TAKEN BY THE UNIVERSITY OF CAPE TOWN TO NOT CONFER A DOCTOR OF PHILOSOPHY DEGREE ON MR ADAM ANDANI**



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## LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS/ ABBREVIATIONS	DESCRIPTION
<b>Mr Pityana</b>	Chairperson of the Council, Mr Siphon Pityana
<b>Prof Kyobe</b>	Chairperson of the DDB, Professor Michael Kyobe
<b>PhD</b>	Doctor of Philosophy
<b>DDB</b>	Doctoral Degrees Board
<b>Prof le Roex</b>	Former Deputy Vice Chancellor, Prof le Roex
<b>Dr Price</b>	Former Vice Chancellor, Dr M Price
<b>The Complainant</b>	Mr Adam Andani
<b>Ms Taylor</b>	Ms Vivienne Taylor
<b>Third examiner</b>	Professor Williams
<b>PAJA</b>	Promotion of Administrative Justice Act, 2000
<b>Public Protector Act</b>	Public Protector Act, 1994
<b>The Public Protector Rules</b>	Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 as amended
<b>Constitution</b>	The Constitution of the Republic of South Africa, 1996
<b>HEA</b>	The Higher Education Act, 1997 (as amended)
<b>PAJA Code</b>	The Promotion of the Administrative Justice Code of Good Administrative Conduct
<b>TII</b>	Turnitin
<b>UCT</b>	University of Cape Town
<b>Council</b>	University of Cape Town Council
<b>DCoA</b>	University of Cape Town's Doctoral Committee of Assessors
<b>UCT Ombud</b>	University of Cape Town's Ombudsman
<b>UWC</b>	University of Western Cape
<b>Tribunal</b>	University Student Disciplinary Tribunal
<b>VC</b>	Vice Chancellor
<b>Prof Phakeng</b>	Vice Chancellor Professor, Mamokgethi Phakeng

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## 1. INTRODUCTION

- 1.1 This is a closing report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), section 8(1) of the Public Protector Act, 1994 (Public Protector Act) and Rule 40(b) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018*, as amended (the Public Protector Rules) as promulgated in terms of section 7(11) of the Public Protector Act.
- 1.2 The report relates to an investigation into allegations of improper conduct and maladministration by the University of Cape Town (UCT) relating to its decision not to confer a Doctor of Philosophy Degree (PhD) to Mr Adam Andani.
- 1.3 The report is submitted in terms of section 8(1) and (3) of the Public Protector Act to the following persons:
- 1.3.1 Emeritus Professor Daya Reddy, the interim Vice Chancellor of the University of Cape Town; and
- 1.3.2 Mr Andani (the Complainant).

## 2. THE COMPLAINT

- 2.1. The complaint was lodged on 23 April 2019, by Mr Andani (the Complainant) against the UCT alleging that:
- 2.1.1 The Doctoral Degrees Board (the DDB) of the UCT approved the Doctoral Committee of Assessor's (the DCoA) recommendation not to accept his thesis on the basis that he substantially plagiarised a former law student's dissertation;

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- 2.1.2 He lodged an internal review application against the recommendation of the DCoA to the then Vice Chancellor, Dr Max Price (Dr Price) on 20 February 2018, on the grounds that there were procedural irregularities in the appointment of a third examiner to mark his thesis, as well as disparities in the third examiner's report, which were overlooked by the DCoA when it made its recommendation to the DDB not to accept his thesis;
- 2.1.3 Dr Price nominated Professor le Roex (Prof le Roex) to review the alleged examination procedural irregularities, excluding the alleged plagiarism found on the Complainant's thesis by the third examiner;
- 2.1.4 Prof le Roex finalised his review and confirmed that there were irregularities in the examination process committed by both the supervisor and the Complainant, in that they breached the confidentiality of the examination process. However, he concluded that the irregularities did not have an effect on the third examiner's ability to discharge his duties impartially and therefore upheld the DDB's decision; and
- 2.1.5 He was dissatisfied with Prof le Roex's conclusion and sought intervention from the UCT Ombudsman (the Ombud). The Ombud assisted him to lodge a second appeal to the Chairperson of the DDB, Professor Michael Kyobe (Prof Kyobe) on 03 July 2018. Prof Kyobe considered his appeal and concluded on 03 August 2018, that the DDB's decision should be upheld.
- 2.2 The Complainant remained dissatisfied with Prof Kyobe's decision to uphold the DDB's decision and approached the Public Protector requesting that an investigation be conducted and remedial action taken regarding the decision taken by the UCT not to confer him the PhD.

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### 3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that:

*“The Public Protector has the power, as regulated by national legislation –*

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action”.*

3.3 Section 182(2) of the Constitution directs that the Public Protector has the additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act, which states amongst others that, the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.4 In *Faleti v the University of South Africa and Others*<sup>1</sup>, the Court dealt with an application wherein the applicant challenged the decision of the first respondent (Unisa) not to confer on him a Doctorate Degree in Public Administration. The first respondent raised a point *in limine* that the court does not have jurisdiction to hear the matter.

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<sup>1</sup> 2021 ZAGPPHC 482 (27 July 2021)

- 3.5 The Court held that Unisa is a Higher Education Institution created in terms of the Higher Education Act, 1997 (HEA), and is also an administrator as contemplated in section 1(b)(ii) of the Promotion of Administrative Justice Act, 2000 (PAJA). The Court further held that Unisa exercises public power or performs a public function in accordance with the provisions of section 1(b) of PAJA which provides:

***“administrative action”*** means any decision taken, or any failure to take

a  
decision, by—

...

(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect...”.

- 3.6 The Court, therefore, declared that “[T]he authorities are crystal clear that a university is a public institution of Higher Education and is governed by administrative law as contemplated by PAJA.”

- 3.7 In light of the aforesaid prescripts and court judgment, by virtue of UCT exercising a public power and performing a public function within the national sphere of government, in terms of the Constitution, PAJA and the HEA, UCT is an administrator as contemplated in section 1(b)(ii) of PAJA and an organ of state, as defined by Section 239 of the Constitution. In the circumstances, the Public Protector has the jurisdiction to investigate the conduct and decision of the UCT’s DCoA, DDB and any natural person performing a public function, such as the VC’s nominee, with regard to this matter and to take appropriate remedial action.

- 3.8 The UCT is an organ of state in terms of section 239(b)(ii) of the Constitution read with section 65B(i) of the Higher Education Act, 1997 and section 6(5)

of the Public Protector Act, as a result, the Public Protector is satisfied that the complaint falls within her competency to investigate. The UCT did not dispute the Public Protector's jurisdiction.

#### **4. THE ISSUE IDENTIFIED FOR INVESTIGATION**

4.1 Based on the analysis and evaluation of the complaint, documentation and information received during the course of the investigation, the following issue was identified to inform and focus the investigation:

4.1.1 Whether there were irregularities in the decision making process culminating in the UCT not conferring Mr Andani a PhD, and if so, whether the conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

4.2 Having considered the issue for investigation, it is paramount to state upfront that the investigation of the Public Protector focused on whether there was non-compliance with procedures by the relevant parties during the process of nominating Prof Williams as a third examiner and actions taken or that should have been taken by the UCT upon being informed of the alleged flaws in the examination process.

4.3 The investigation by the Public Protector did not extend to determining whether there was plagiarism by the Complainant in his PhD thesis. The Public Protector does not have the competency to make such a determination which is the autonomy of the UCT based on its academic assessments on the proficiency of the Complainant, in relation to the examination of his thesis.



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## 5. THE INVESTIGATION

### 5.1 Methodology

5.1.1 The investigation was conducted in terms of section 182(1) of the Constitution, read with sections 6 and 7 of the Public Protector Act. The Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation.

### 5.2 Approach to the investigation

5.2.1 The investigation was approached using an enquiry process that seeks determine:

- (a) What happened?
- (b) What should have happened?
- (c) Is there a discrepancy between what happened and what should have happened and does that deviation amounts to improper or suspected improper conduct? and
- (d) In the event of improper conduct and maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the improper conduct and maladministration?

5.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the course of the investigation. In this particular case, the factual enquiry principally focused on whether there were irregularities in the decision making process culminating in the UCT not conferring Mr Andani a

PhD, and if so, whether the conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

5.2.3 The enquiry regarding what should have happened, focuses on the law, policy prescripts and/or rules that regulate the standard that should have been met by the UCT to prevent improper or suspected improper conduct as well as maladministration.

### 5.3 **The investigation process**

5.3.1 The investigation process included correspondence exchanged between the Public Protector's Investigation Team, the Complainant, the UCT Chairperson of the DDB, the then UCT Vice Chancellor and Deputy Vice Chancellor (DVC) and the UCT Ombud as well as receipt of copies of documentation pertinent to the complaint.

### 5.4 **Key documentation obtained**

5.4.1 All relevant documents and correspondence obtained were analysed and evaluated. Relevant laws, policies and related prescripts were considered and applied throughout the investigation. Below is the list of copies of key documentation obtained and analysed during the course of the investigation:

5.4.1.1 A complaint form signed and dated 23 April 2019 by the Complainant;

5.4.1.2 Copies of Facebook and email communication between Professor Williams, Mr Andani and the Supervisor titled "*my conversations with Professor Williams which I requested him to serve as an external examiner as per Professor Taylor's request*" dating from 04 November 2013 to 08 August 2017;

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- 5.4.1.3 Copies of External Examiners Examination Reports: Examiner 1 report dated 04 October 2017 and Examiner 2 report dated 25 October 2017;
- 5.4.1.4 A copy of the Supervisor's report entitled "*Supervisor's report on Examination Result- Adam Andani (ANDADA002)*" dated 22 November 2017;
- 5.4.1.5 Copy of Minutes of DCoA Meeting(s) held on 30 November 2017 and 07 December 2017;
- 5.4.1.6 A copy of a letter from the DDB Office signed by the Janine Isaacs and dated 08 February 2018 communicating the PhD outcome to the Complainant;
- 5.4.1.7 Copy of a letter titled "*motivation to review Doctoral Degrees Board's (DDB) decision on the outcome of my PhD thesis*" compiled by the Complainant to the Vice Chancellor, Dr Max Price dated 20 February 2018;
- 5.4.1.8 Copies of email trails between the Complainant and Professor Phakeng dating from 05 March 2018 to 07 March 2018 regarding a request for review of DDB Decision on PhD outcome;
- 5.4.1.9 Copies of Prof le Roex's letter(s) dated 22 March 2018 titled "*Review of DDB Decision on PhD outcome: Mr Adam Andani (ANDADA002)*", 27 March 2018 titled "*Review of DDB Decision*" and 03 April 2018 titled "*Review of DDB Decision on procedural irregularities relating to PhD examination*" and the Complainant's response letters thereto;
- 5.4.1.10 Copies of letters of appeal to the VC dated 03 April 2018 and response by the VC to the Complainant dated 4 April 2018 advising the Complainant to approach the UCT Ombud;
- 5.4.1.11 Copies of letters compiled by the Complainant and addressed to the UCT Ombud titled "*letter of appeal against the Doctoral Committee of Assessors (DoCA) recommendation on PhD outcome (andada002)*" dated 10 April

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- 2018 and titled *“letter of appeal against the Doctoral Committee of Assessors recommendation on PhD outcome”* dated 21 May 2018;
- 5.4.1.12 Copies of email trails between the Complainant and Professor Kyobe with a subject line *“letter of appeal to the DDB Chair- Professor Michael Kyobe (Adam Andani PhD outcome- andada002)”* dating from 03 July 2018 to 03 August 2018;
- 5.4.1.13 Copy of a letter compiled by the UCT Ombud to the Chair of UCT Council, Mr Siphon Pityana titled *“Re-Exclusion of Two Doctorates- Mr Adam Andani and Mr Komane Mfumadi”* dated 15 October 2018;
- 5.4.1.14 Copy of Minutes of DDB Meeting held on 03 December 2018 addressing the Ombud recommendations;
- 5.4.1.15 Copy of an email from the DDB Chair- Professor Kyobe’s to the UCT Ombud with the subject line *“Adam Andani Appeal Outcome”* dated 13 December 2018 communicating the DDB decision against Ombud recommendation;
- 5.4.1.16 An inquiry email from the Public Protector to the VC dated 06 September 2019 and a response from the VC dated 30 September 2019 as well as comments to the VC responses from the Complainant dated 17 October 2019;
- 5.4.1.17 Follow-up inquiry email from the Public Protector to the VC dated 09 February 2021 and response from the VC dated 18 February 2021 as well as comments to the VC responses from the Complainant dated 18 March 2021;
- 5.4.1.18 Copy of UCT Tribunal judgment dated 04 June 2021;
- 5.4.1.19 Copy of a letter compiled by Mr Andani entitled *“appeal in respect of the outcome of PhD thesis submitted in 2017 in the Department of Social*

*Development, Humanities Faculty titled “A critical analysis of participatory spaces for local planning; A study of Saldahna Bay in the Western Cape”* dated 18 June 2021 addressed to UCT DVC- Professor Harrison; and

5.4.1.20 Copy of a sanction on UCT vs Adam Andani Tribunal Hearing compiled by Emeritus Professor L. Leeman dated 30 June 2021.

## 5.5 **Legislation**

5.5.1 The Constitution of the Republic of South Africa, 1996;

5.5.2 The Public Protector Act, 1994;

5.5.3 Promotion of Administrative Justice Act, 2000;

5.5.4 The Higher Education Act, 1997 (as amended); and

5.5.5 Institutional Statute of the University of Cape Town, July 2016 (as amended).

## 5.6 **Other policy prescripts and guidelines**

5.6.1 The PAJA Code of Good Administrative Conduct;

5.6.2 UCT General Rules and Policies 2019 – Appeals;

5.6.3 Doctoral Degrees Board Terms of Reference;

5.6.4 UCT Generic Process Guidelines for Committees of Assessors (COAs) in respect of Doctoral Degrees;

5.6.5 PhD Students Examination Guide; and

5.6.6 UCT Guidelines for PhD Candidates and Supervisors.

## 5.7 Notice Issued in terms of Rule 41 of the Public Protector Rules

5.7.1 A notice in terms of Rule 41(1)(b) of the Public Protector Rules was issued to the Complainant on 13 March 2023, to provide him with an opportunity to make representations in connection with the intended closure of the complaint. The Complainant did not respond to the Notice by the deadline of 28 March 2023.

## 6. THE DETERMINATION OF THE ISSUE IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

6.1 **Whether there were irregularities in the decision making process culminating in the UCT not conferring Mr Andani a PhD, and if so, whether the conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act**

### *Common cause*

6.1.1 The Complainant was a registered PhD student at the UCT and his research is titled “*A critical analysis of participatory spaces for local planning: A study of Saldanha Bay in the Western Cape*”;

6.1.2 On 08 February 2018, the Complainant received a letter from the DDB notifying him that the DDB had approved the recommendation of the DCoA that he should not be awarded the PhD and that his supervisor would provide him further details;

6.1.3 The Complainant was informed by his supervisor on 10 February 2018, that Prof Williams had accused him of plagiarism which led to the DCoA recommendation to the DDB to fail his thesis and not award him the PhD;

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- 6.1.4 On 20 February 2018, the Complainant lodged a formal internal review against the DCoA's recommendations and the subsequent DDB's decision with the former VC, Dr Max Price on grounds that the determination of the outcome of his PhD thesis was fraught with possible procedural examination irregularities;
- 6.1.5 The VC's nominee Prof le Roex, reviewed the Complainant's internal review application wherein he confirmed and acknowledged flaws in the examination process but concluded that the flaws did not affect Prof Williams's ability to act impartially thus upholding the DDB's decision;
- 6.1.6 On 03 July 2018, the Complainant together with the Ombud, submitted a second appeal to the Chair of DDB, Professor Kyobe (Prof Kyobe) who reviewed the appeal and upheld the DDB's decision;
- 6.1.7 The Complainant declined an invitation to a hearing from the UCT Student Disciplinary Tribunal (the UCT Tribunal) to state his side of the case. The UCT Tribunal later made a decision that the Complainant be suspended for 18 months with effect from 01 July 2021; and
- 6.1.8 The Complainant lodged a third appeal with the DVC, Professor Harrison (Prof Harrison) after the verdict of the UCT Tribunal wherein Prof Harrison upheld the DDB's decision.

#### *Issues in dispute*

- 6.1.9 The issue for the Public Protector's determination and whether there were irregularities in the decision making process culminating in the UCT not conferring Mr Andani with a PhD.
- 6.1.10 The Complainant asserts that the flawed process in the nomination and appointment of Prof Williams as the third examiner negatively impacted and jeopardised the outcome of his PhD thesis. The UCT on the other is of the view that the Complainant could not be conferred a PhD on basis that the

examination of his thesis revealed that he plagiarised the dissertation of another former student and as a result his thesis did not meet the required proficiency standard of the UCT.

*The Complainant's version*

- 6.1.11 The Complainant contended that:
- 6.1.11.1 Prof Williams submitted a report which contained numerous disparities when compared to the reports of the other two external examiners and this disparity was ignored by the DCoA and DDB in deciding to fail his thesis;
  - 6.1.11.2 The UCT denied him an opportunity to make representations and failed to fairly administer his appeal process, despite the existence of evidence proving procedural irregularities and disparities which were discovered;
  - 6.1.11.3 The UCT Tribunal's verdict did not find him guilty of plagiarism but the UCT still did not allow him a chance to revise and re-submit his thesis;
  - 6.1.11.4 He refutes that he committed plagiarism and contends that Prof William's irregular nomination resulting in his appointment as a third examiner fatally tainted the examination process, and the entire examination process was flawed;
  - 6.1.11.5 Professor Kyobe and Prof Phakeng, did not independently review his thesis but relied on the DCoA recommendation to uphold the DDB's decision;
  - 6.1.11.6 Whilst he concedes that there may be similarities between his work and that of Jarowzynski after seeing the dissertation in question and however, Chapter 4 of his PhD thesis was informed by his own research experience and Supervisor's guidance, but not Jarowzynski's. Therefore, he maintains that he *"did not copy"* Jarowzynski's dissertation;



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- 6.1.11.7 During a pre-hearing held on 10 December 2020 with Adv. Scalabrino, it was found that most of the 21 instances of plagiarism pointed to internet sources and further “*indicated to the judge that Professor Weiss should lead the evidence and testify before trial*” as the alleged plagiarism was reported by the DCoA;
- 6.1.11.8 He only confirmed that Prof Williams was appointed as the third examiner on 10 February 2018, when he met with the supervisor to discuss the outcome of his PhD thus he should not be punished for being in breach of confidentiality when he was not privy to the selection process, besides merely suggesting a name at the request of his supervisor;
- 6.1.11.9 The DCoA overlooked Prof Williams’s upfront declaration of their Facebook contact during the examination process;
- 6.1.11.10 Prof Williams’ examination report ought to have been disregarded, due to the report containing numerous disparities which should have been investigated by Prof le Roex, the DCoA and DDB but were not and the report “did not follow the structure provided by UCT for external examiners to follow”;
- 6.1.11.11 The UCT Ombud investigated his matter and wrote recommendations to the Chair and Deputy Chair of Council for redress and the refusal by the DDB to implement the Ombud’s recommendations was a way of undermining the Ombuds mandate;
- 6.1.11.12 Accordingly, Prof le Roex did not provide reasons why his connection with Prof Williams did not have a material effect on his ability to provide an unbiased examination of his PhD thesis, nor reasons why the DDB’s decision to use Prof Williams as an examiner was not procedurally flawed; and
- 6.1.11.13 In the absence of clear reasons, any decision taken was unfair and unreasonable.

*UCT's version*

- 6.1.12 The Public Protector issued letter(s) of inquiry to Prof Phakeng, wherein she responded on 30 September 2019 and 18 February 2021 respectively, to the Complainant's allegations stating, *inter alia*, that:
- 6.1.12.1 The DCoA and the DDB only knew about the procedural flaws relating to the nomination of Prof Williams as the third examiner after it was reported by the Complainant following his PhD thesis outcome. The DCoA and DDB followed all required procedures correctly and there was no evidence of any process irregularity by either body. As a result, the examination process was not tainted by the candidate and third examiner's prior contact;
- 6.1.12.2 This procedural flaw in the nomination of Prof Williams was fully acknowledged by Prof le Roex during his review of the matter. It was noted by the Committee that Prof Williams' declared his Facebook contact with the Complainant and that contact was "*not sufficient to preclude him from examining the thesis*";
- 6.1.12.3 Prof le Roex concluded in his review of the alleged flawed examination process that despite the irregularities in the nomination process, Prof Williams' ability to discharge his duties impartially was not affected;
- 6.1.12.4 The DCoA findings of plagiarism were independent of that Prof Williams', as he did not provide details of plagiarism in the thesis and thus there was no reason to replace his examination report. **Therefore, given the nature of the criticism of the Complainant's thesis, i.e. plagiarism, a new examination of the original thesis will not lead to a different outcome.** (own emphasis);
- 6.1.12.5 The DCoA considered the supervisor's report that pointed out the disparities in the third examiner's Turnitin (TII) report and ran its own independent TII

report for accuracy and to reach a decision on whether there was substantive plagiarism or not;

- 6.1.12.6 The purpose of TII is *“to show similarity index, not plagiarism and therefore the total of 21% or 31% is not conclusive in determining plagiarism”*. The DCoA had its own TII report and had a week between the first meeting of 30 November and second meeting of 7 December 2017 to apply their minds and examine in depth the similarities identified by TII. The DCoA had also been given the Jaroszynski text to compare and reach a decision on plagiarism rather than focus on the TII similarity index;
- 6.1.12.7 The main issue that informed the DCoA’s decision of substantive plagiarism was the lack of use of quotation marks when quoting directly, as well as the unacknowledged use of Jaroszynski’s dissertation that was found in the Complainant’s thesis further pointing that, *“The Supervisor who in her first report dated 22 November 2017 had disputed the plagiarism in the Complainant’s thesis, declared that having noted the Turnitin (TII) report and Jaroszynski’s text, she agreed that there was plagiarism, but asked that Mr Andani nonetheless be allowed to ‘revise and resubmit’”*;
- 6.1.12.8 In his letter dated 20 February 2018, the Complainant stated that: **“The DCoA, following their investigation (own emphasis) found similarities...”** He thus acknowledged that the DCoA investigated for itself and did not rely solely on the report of the third examiner, without investigating or considering if it was substantive;
- 6.1.12.9 The UCT Rules make no provision for the students to engage with examiners. In addition, the Rules state that there is no appeal against a decision of a Faculty Examinations Committee (FEC) or the DDB on the award of course results;
- 6.1.12.10 The role of the DCoA is different from that of the UCT Tribunal in that; the DCoA must establish if there is plagiarism from the text submitted, and if

so, whether it is substantive or incidental whilst the Tribunal considers the conduct of students and in case of plagiarism, determines the intent;

- 6.1.12.11 Students can only defend themselves or present their side of the story against the allegations of plagiarism before the UCT Tribunal and not before the DCoA or DDB. Furthermore, that the Complainant declined the UCT Tribunal's invitation to attend a hearing;
- 6.1.12.12 The UCT Council was not an appropriate body to consider and decide on an academic matter, but the DDB is the body that decide on the results of PhD examination, hence the Ombud's letter was considered by the DDB at their meeting of 03 December 2018. Dr Phakend reiterated that *"...the matter of substantive plagiarism is academic, requiring an academic decision, not operational (Ombud) or governance (Council) decision"*;
- 6.1.12.13 She referred to the UCT Ombud as and *"administrative Ombud"* and so not able to overturn the ruling on an academic judgement and added that the Chair of Council's role does not permit making decisions, such as assessment of any claim of plagiarism, thus the DDB was the correct body to consider the UCT Ombud recommendations and not the UCT Council;
- 6.1.12.14 It was appropriate and essential that the DDB apply its mind, for a second time, to the appropriate academic decision, as was done on 3 December 2018", and emphasized that this decision could not have been made through a 'governance' route over an 'academic' route;
- 6.1.12.15 The *"good reports from the other examiners are also not material once the DCoA has found plagiarism"*. Therefore, a new examiner cannot change the conclusion of the DCoA reached after an investigation into plagiarism;
- 6.1.12.16 The review process undertaken by Prof le Roex relating to determining possible examination flaws, adequately resolved the procedural irregularities and made conclusions based on evidence that the DDB decision should stand;

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- 6.1.12.17 A case of “*substantive plagiarism*” was fully addressed by the DDB in a meeting on 03 December 2018 and the outcome was communicated to the Ombud by Prof Kyobe via email dated 13 December 2018; and
- 6.1.12.18 In addition, that the DCoA, DDB, Prof Kyobe, Prof Harrison and herself, all arrived at the same conclusion after repeated reviews of the thesis of the Complainant.
- 6.1.13 Prof Phakeng further referred to the UCT Tribunal hearing stating amongst others that:
- 6.1.13.1 Adv. Scalabrino was appointed to present or lead evidence in the Tribunal and was not the UCT’s legal representative;
- 6.1.13.2 Adv. Scalabrino noted that the “*Complainant freely admitted to portions of his thesis lacking full and proper attribution...*” and asked the Complainant to comment on the charges against him, wherein the Complainant allegedly made comments that were unrelated to the DCoA charges which resulted in Adv. Scalabrino referring the case to trial;
- 6.1.13.3 Adv. Scalabrino specifically denies any agreement that the 18 examples of incidences that was agreed came mainly from internet sources; and
- 6.1.13.4 The UCT’s conduct in the matter did not constitute improper or suspected improper conduct and maladministration.

*Notice issued in terms of Rule 41(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 as amended (the Public Protector Rules) made in terms of the Public Protector Act, 1994 (Public Protector Act)*

- 6.1.14 A notice issued in terms of the Public Protector Rules dated 12 March 2023 was sent to the Complainant via his email address on 13 March 2023, (which

has been the primary means of communicating with the Investigation Team relating to this matter) requesting him to submit representation pending the closure of the complaint if any, by no later than 28 March 2023. A reminder was also forwarded to the Complainant via email on 15 March 2023.

- 6.1.15 The Complainant neither acknowledged receipt of the notice nor submitted representation relating to the pending finalisation of the investigation and issuance of a closure report by the Public Protector on the return date of 28 March 2023.

*Applicable legal prescripts*

**The Constitution of the Republic of South Africa, 1996**

- 6.1.16 Section 33 of the Constitution provides that:

*(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.*

*(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.*

**Promotion of Administrative Justice Act, 2000 (PAJA)**

- 6.1.17 Section 3(1) of PAJA prescribes that “*Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.*”

- 6.1.18 Furthermore section 3(3) of PAJA states that:

*“(3) In order to give effect to the right to procedurally fair administrative action, and administrator may, in his or her or its discretion, also give a person referred to in subsection (1) an opportunity to-*

- (a) *obtain assistance and, in serious or complex cases, legal representation;*
- (b) *present and dispute information and arguments; and*
- (c) *appear in person.*”

### **Higher Education Act, 1997 (HEA)**

6.1.19 Section 65B of the HEA bestows Universities powers to award diplomas and certificates and confer degrees’ subject to candidates having attained the **standard of proficiency** (emphasis added) which is determined through assessment as required by the Senate of the Public Higher Institution.

6.1.20 Section 65B(1)(2)(b) of HEA specifically stipulates that:

(1) *A public higher education institution may, subject to its institutional statute and this Act, award diplomas and certificates and confer degrees.*

(2) *Save as is provided in section 65C, no diploma or certificate may be awarded and no degree may be conferred by a public higher education institution upon any person who has not...*

*(b) completed the work and attained the standard of proficiency determined through assessment as required by the senate of the public higher education institution, subject to section 7. (Own emphasis)*

### **Institute Statute of the UCT, July 2016**

6.1.21 Section 22 of the Institute Statute of the UCT, read with paragraph 7.2.2 of the DDB *Terms of Reference*, paragraph 5 of the UCT Procedures for the DDB and paragraph 7 of the UCT Guidelines for PhD Candidates and Supervisors, gives delegated authority regarding appointment of external examiners exclusively to the DDB as a delegated Committee of Senate.

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## Doctoral Degrees Board Terms of Reference, 19 November 2019

6.1.22 Paragraph 3 and 7.2.3 of the DDB *Terms of Reference* stipulates amongst others that:

*(3) the purpose of the DDB is to maintain the integrity and qualification standard of doctoral degrees at UCT. This is achieved through the work of the Doctoral Degrees Board which undertakes to regulate, administer the examination and award of all PhD degrees and maintain oversight of senior (unsupervised) doctorates...*

*7.2.3. consider the reports of the committee of assessors and examiners on candidates for PhD degrees, and decides the result of each examination”*

### **UCT Generic Process Guidelines for Committees of Assessors (the Generic Process Guidelines)**

6.1.23 The UCT’s Generic Process Guidelines read with section E of the PhD Student Examination Guide as well as DDB14<sup>2</sup> outlines the process of nomination of external examiners.

6.1.24 In terms of the Guidelines, the DDB delegates the relevant Faculty to form a Committee of Assessors that will recommend examiners as nominated by supervisors. The Guideline emphasise the confidentiality<sup>3</sup> rule on the examination process. The DDB appoints the external examiners.

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<sup>2</sup> Notes contained in the DDB14 regarding confidentiality stipulates that: “*this form must be completed by PhD student and the supervisors at intention stage. Supervisors must not discuss or disclose the name of examiner to PhD students before the end of the examination process, and subject to the examiners consent.*”

<sup>3</sup> Footnote 2 of the Guidelines states that “*an examiner should preferably not have had prior contact with the candidate’s work and where there has been prior contact between a candidate and examiner nominated by a COA, this must be reported by the CAO to the DDB. The nomination of examiners should not be discussed with or disclosed to the candidate.*”



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6.1.25 Section 12 of the UCT Institutional Statute read with UCT Ombud Terms of Reference outlines the functions of the Council and the Ombud as:

*“(a) The council governs the University in terms of the Act and this Statute.*

*(b) appoints all staff of the University, but, in the case of academic staff of the University, it may do so only after consultation with the senate.”*

6.1.26 The Ombud provides dispute resolution services to the university community. The purpose of the Ombud is *“to be available as an impartial resource for the review of all decisions and actions that fall within the ambit of university life in order to facilitate fair and equitable resolutions to concerns and problems raised by any member of the university community.”* (emphasis added)

*Analysis of evidence*

6.1.27 Based on the evidence and information obtained during the investigation as well as the applicable legal framework, the Public Protector found that:

6.1.27.1 The nomination of external examiners by the supervisor and the DCoA to the DDB is part of the examination process and in terms of paragraph 5 of the UCT Procedures for the DDB, the nomination of examiners should not be discussed with or disclosed to the candidate.

6.1.27.2 In this case, the supervisor requested the Complainant to recommend a third examiner, which is not allowed in terms of the UCT Procedures as it constitutes a breach of examination confidentiality. However, given that the DCoA was not aware of the breach of the examination confidentiality by the supervisor when she involved the Complainant in the nomination of Prof Williams as the third examiner, the DCoA cannot be faulted. The investigation found that the DCoA was not aware of this information prior to

the appointment of Prof Williams as the third examiner, but only became aware after Prof Williams raised plagiarism in the thesis of the Complainant.

6.1.27.3 Professor le Roex's review of the nomination process found that the irregularity regarding the appointment of Prof Williams did not automatically invalidate the examination process and the outcome of the Complainant's thesis.

6.1.27.4 All three examination reports, including the supervisor's report, were considered by the DCoA which decided to conduct an independent investigation against allegations of plagiarism reported by the third examiner.

6.1.27.5 As part of the independent investigation, the DCoA assessed evidence which included external the examiners' reports, the Complainant's thesis, TII reports and Jaroszynski's dissertation.

6.1.27.6 The DCoA had, independent of the third examiner's report, determined that the Complainant had plagiarised the from the dissertation of Jaroszynski and that the plagiarism was substantive. Therefore, the **DDB decided to fail the thesis of the Complainant based on plagiarism** (emphasis added) and not on the third examiner's report alone.

6.1.27.7 Section 7 of the Institutional Statute of the UCT, read with Rule G17.1; G17.2 and G17.3 of the UCT General Rules and Policies 2019- Appeals, provides that a decision to exercise the discretion under appeals lies with Senate whose authority may be exercised under delegated authority by other officers or nominees of Vice Chancellor. The delegated nominee shall decide on the case/appeal and provide reasons for their decision to the Senate Executive Committee and their decisions and that of the DDB is not appealable<sup>4</sup>. In

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<sup>4</sup> G17.2 states that "there is no appeal from any decision by the Vice-Chancellor's nominee in terms of this rule" and Notes (2) states that "there is no appeal against a decision of an FEC or the DDB on the award of a course result"

terms of these General rules “***There is no appeal against a decision of an FEC or the DDB on the award of a course result.***” (emphasis added).

6.1.27.8 Despite this General rule, the UCT (VC, DDB Chair, Ombud, Prof Harrison) considered all appeals lodged by the Complainant and communicated its decisions and reasons to him.

6.1.27.9 When a University or its Committee is assessing or examining students as is in this case, it is merely performing its academic functions in respect of which it enjoys full academic autonomy in terms of section 32(2) of the Higher Education Act.

6.1.27.10 Therefore, it is submitted that institutions of higher learning are legally empowered to make their own determination on further rigours and standards that need to be met by students before conferring any academic qualifications. The Public Protector is not competent to tinker with this statutory power and autonomy conferred upon institutions of higher learning and any attempt to do so may amount to an overreach.

6.1.27.11 The UCT notified the Complainant of the decision not to confer him a PhD in writing via a letter dated 08 February 2018 and advised him that his supervisor will provide him with more details. This decision by the UCT was done in conformity with the provisions of section 33 Constitution regarding administrative action.

6.1.27.12 The outcome of the Complainant’s PhD was also independently investigated by the DCoA in relation to the alleged plagiarism of a former student’s dissertation. This reason was communicated to the Complainant’s by both his supervisor and Prof Weiss.

6.1.27.13 The Complainant was invited to appear before the UCT Tribunal and make representation, however, he opted not to appear before the UCT Tribunal

and therefore denied himself the opportunity to be heard when he declined the UCT Tribunal's invitation, which was intended to give him an opportunity to present his case and be heard.

6.1.27.14 In light of the above, the DDB is a committee of the Senate that is duly delegated to regulate and administer the examination and award all PhDs and decide the result of each examination in accordance with Senate approved procedures.

6.1.27.15 The UCT reached a decision not to confer PhD to the Complainant due to plagiarism found on his thesis which constituted lack of him meeting the standard proficiency in line with 65B of HEA.

### *Conclusion*

6.1.28 Having considered the evidence, it is the view of the Public Protector that the UCT handled the Complainant's complaint relating to the decision not to confer him a PhD, in conformity with the relevant legislative framework, its statute, policy prescripts and guidelines regulating examination processes and outcomes.

6.1.29 The Public Protector, therefore, concludes that the UCT followed proper procedures and its administrative action was fair and reasonable, in conformity with section 33 of the Constitution, section 3 of PAJA, section 65B (1) and (2)(b) of HEA, section 22 of the Institute Statute of the UCT and its policy guidelines in relation to handling of the Complainant's PhD outcome and the complaint lodged on plagiarism and matters related thereto.

## 7. FINDINGS

Having regard to the evidence, legislation and regulatory framework determining the standards that the UCT should have complied with, the findings of the Public Protector are that:

### **7.1 Whether there were irregularities in the decision making process culminating in the UCT not conferring Mr Andani a PhD, and if so, whether the conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act**

- 7.1.1. The allegation regarding there were irregularities in the decision making process culminating in the UCT not conferring Mr Andani a PhD, is not substantiated.
- 7.1.2. The UCT's decision not to confer a PhD degree to Mr Andani was informed by plagiarism found in his thesis. As a result, the Complainant's thesis was found to have not complied with the required standard of proficiency in terms of section 65B of HEA.
- 7.1.3. Prof le Roex's conduct in declining the Complainant a face-to-face meeting was not improper, rather it was reasonably exercised because he formally attended the internal review lodged by the Complainant and further replied in writing to the Complainant regarding his conclusions.
- 7.1.4. The Complainant denied himself the opportunity to be heard when he declined the UCT Tribunal's invitation to a hearing, which was intended to give him a chance to present his case.
- 7.1.5. The UCT functionaries (DCoA), Professor le Roex, the VC, the DDB Chair, Professor Harrison, and Ombud) appropriately considered and attended to the

Complainant's reviews and appeals, including the evidence before them and all they came to the same conclusion that the Complainant's thesis contained plagiarised material, resulting in the decision to uphold the resolution not to confer him the PhD.

- 7.1.6. It would have been improper for the UCT to award the PhD to Mr Andani while the examination outcome of his thesis did not comply with the required standard of proficiency. Even if the Complainant was awarded the PhD under these circumstances, the issue of the alleged plagiarism would not vanish as it had the potential of being discovered later by other researchers who may make reference to his thesis.
- 7.1.7. The breaching of the confidentiality of the examination process became insignificant as this information was not reported to the UCT at the beginning of the examination process. In other words, the UCT was in the dark about the information when it appointed Prof Williams as the third examiner. The information was brought to the attention of the UCT by the Complainant himself, subsequent to him being provided with the outcome of his thesis which was not in his favour.
- 7.1.8. Accordingly, the decision by the UCT to not award the Complainant a PhD was justifiable and therefore did not constitute improper conduct as envisaged in section 182(1) of the Constitution, 1996 and does not constitute maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- 7.1.9. In the circumstances, the purported intervention sought by the Complainant from the Public Protector to compel the UCT to review its decision not to award him a PhD, would be deemed ultra-vires, unlawful and subject to a possible review for judicial overreaching.

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8. **CONCLUSION**

- 8.1. The Public Protector considers this matter finalised. Should any party be dissatisfied with this decision they are at liberty to approach a court of law and lodge an application for a judicial review of the matter.



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**ADV KHOLEKA GCALEKA**  
**ACTING PUBLIC PROTECTOR OF**  
**THE REPUBLIC OF SOUTH AFRICA**  
**DATE: 30 JUNE 2023**

*Assisted by Adv Deon Bernard*

*Executive Manager: PII Coastal*