

**GOVERNMENT NOTICE**

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**DEPARTMENT OF EDUCATION**

**No. 1340**

**10 December 2008**

**THE HIGHER EDUCATION ACT, 1997**

**(Act No. 101 of 1997)**

**REPORT OF THE INDEPENDENT ASSESSOR,  
DR. VINCENT MAPHAI  
TO THE HONOURABLE MINISTER OF EDUCATION  
G N M PANDOR, M.P.**

**INVESTIGATION INTO THE MANGOSUTHU UNIVERSITY OF TECHNOLOGY  
OCTOBER 2008**

## 1. CONTEXT

The Independent Assessor was appointed by the Minister in terms of Chapter 6 of the Higher Education Act, 1997 (Act no. 101 of 1997) as amended and was mandated in a letter of 15 September 2008 to conduct an investigation into the affairs of the Mangosuthu University of Technology. The Terms of Reference supporting this mandate are detailed in Annexure I.

The Minister's intervention was initiated at the request of the Chair of Council on 3 September 2008 who stated that a special meeting of Council had resolved that 'a thorough and independent assessment of the affairs of the University be conducted with respect to governance, management and employment relations'. The Minister responded on 8 September 2008 announcing her intention to appoint an independent assessor in terms of the Higher Education Act 1997 as set out in section 45(a). In terms of Section 48 of the Act, provision is also made for the Independent Assessor to with the concurrence of the Minister appoint any other person with suitable knowledge and experience to assist him or her in the performance of his or her functions. A team of specialists in the areas of Governance and Management Structures and Efficiencies, Human Resources and Financial Management Systems were appointed. Details of the team and the finalised Terms of Reference were provided to the institution by the Minister on 15 September 2008.

The broader context for the investigation is as follows. On 18 June 2008 a document outlining concerns regarding matters of governance was tabled at a Council Meeting. It was resolved that Council would request EXCO to set up terms of reference for an investigation to help 'review policies and procedures related to the matters raised and to establish those policies and procedures as well'. At a subsequent meeting on 13 August 2008, EXCO resolved that the Vice-Chancellor and Principal should take leave with immediate effect while the investigation took its course. At a reconvened meeting of EXCO on 22 August 2008, a resolution was tabled and accepted that the Vice-Chancellor and Principal be placed on compulsory leave while the investigation was in progress. It was further resolved that Professor E C Zingu be asked to act as Vice-Chancellor and Principal with effect from 25 August 2008. A Special Meeting of EXCO on 27 August 2008 identified in detail the key issues that an investigation should address and confirmed that the Minister had been apprised of the circumstances and had delegated Dr Qhobela the Deputy Director-General: Higher Education to attend a special meeting of Council on 3 September 2008. This meeting resolved that Council together with the Department of Education would draft the terms of reference and that a letter would be sent to the Minister requesting the appointment of an Independent Assessor as provided for in the Higher Education Act.

The Vice-Chancellor, Professor Ndlovu was appointed in 1997 as Vice-Chancellor of the then Mangosuthu Technikon. In September 1999, an Independent Assessor was appointed by the then Minister of Education, Professor Kader Asmal to investigate affairs at the technikon brought about by a dispute between NUTESA and the institution and steps required to 'restore effective academic and administrative functioning'. The report recommended the termination of the services of the Vice-Chancellor. A Council resolution on 13 September 2000 considered the Independent Assessor's report and decided, however, to lift his suspension.

## 2. THE INVESTIGATION

The Independent Assessor and team were tasked with the responsibility of making recommendations to the Minister of Education on:

- Restoring of effective and proper governance, management, administration and employment relations at the University; and
- Recommending actions, if any, that ought to be taken.

In preparation for the assessment, a briefing was arranged by the Minister and senior officials in the Department of Education. This was critical in that it highlighted the urgency for a resolution to the current crisis of management at the institution. Officials from the Higher Education Branch of the Department of Education would provide Secretariat support and any other assistance required. The specialist team was appointed based on specific skills and this report constitutes a shared responsibility for the task. The other members of the team were:

Mr C Lyall-Watson: Human Resource Management

Dr D Swemmer: Governance, Management and Administration

Mr P Slack: Finance

Duly noting the task, all avenues were pursued to fulfil this mandate within the set time frames. This report is submitted against the tight time constraints imposed by legislation. Detailed individual reports on the areas covered by the specialists have been submitted to the Department of Education. At the outset, an open invitation was extended to the university community and other stakeholders to either contact the team for interviews or send in written submissions. Numerous submissions were received. A list of all persons interviewed is available should it be required. Prior to commencing our work on site, the Independent Assessor requested the Chair of Council to make available certain documentation for the team. This enabled the team to work through the preliminary body of evidence prior to arriving at the institution. Key documentation perused included minutes of all Council and EXCO meetings as well as sub-committee minutes and agendas. Financial statements, accounts, reports and HR files were also examined.

On 26 September 2008, the team met the Chair of Council and several members of the EXCO of MUT. This information-sharing session provided valuable input on the critical issues that have led to this investigation. It also provided the participants with an opportunity to advise the team on the approach to be adopted and areas of special focus. The Acting-Vice Chancellor, Professor E Zingu, who facilitated other meetings and interviews for the panel was also interviewed. On 29 September 2008 a meeting was scheduled with the Senior Management of MUT which enabled discussion on their perspectives on matters as set out in the Terms of Reference. The Assessor had meetings lasting 90 minutes with each of the following constituencies: Academic Board, Deans, Student Representative Council, Student Parliament and the Institutional Forum. A number of former employees also provided both oral and written evidence. Throughout the meetings it was made clear what the role of the independent assessor and team was and the limited time period.

Numerous attempts were made to establish an interview with the Vice-Chancellor, Prof Ndlovu. A letter was written to him requesting an interview as it was deemed necessary for the purposes of the assessment. A response was received from Professor Ndlovu's lawyer setting conditions to the terms of engagement. It was decided that these conditions could not

be fulfilled. After five telephone calls and two letters sent by the Independent Assessor, Professor Ndlovu did not avail himself of the opportunity to meet. It is appropriate for Council to explore whether any action ought to be taken against Prof Ndlovu for failure to cooperate with a statutory assessment vehicle initiated by the Minister.

It follows then that where specific allegations against the Vice-chancellor are reported; there has been no opportunity to test them against his claims. Unless specifically stated otherwise, such views would not reflect those of the Independent Assessor or the team. They are, nevertheless, sufficiently serious to be mentioned with the hope that a formal hearing will be conducted.

This report is constructed around the specific areas identified in the Terms of Reference and contains both the findings and recommendations pertinent to each section.

### **3. FINDINGS THROUGH THE ASSESSMENT OF FORMAL RECORDS AND INTERVIEWS**

#### **3.1 Financial management systems of the university**

This section of the report provides an overview of the financial management systems of the university. A detailed report has been submitted to the Department of Education along with the list of people interviewed.

There are areas of commonality in the reports of various sections of Governance, HR and Finance. This is evident in relation to governance aspects and there is likely to be some repetition between this financial report and the governance report.

#### ***Council***

As a general observation based on detailed perusal of EXCO and Council Minutes as well as sub-committees of Council and corroborated by other components of the investigation, it appears that Council has abdicated responsibility for a sustained period of time. They have not exercised sufficient fiduciary responsibility over the affairs of the institution and have not fully distilled what the role of a Council should be at a university. It is clear that they have taken direction from the Vice-Chancellor and Principal (VC) and have deferred to his interpretation of the governance role of Council. Recently the Vice-Chair of Council pursued a line of inquiry and began probing the issues of governance. The Council Minutes of 18 June 2008 reflects that a report on the governance of the institution was tabled which highlighted several problems. A decision was taken at this meeting that an external expert should be brought in to investigate and make specific recommendations. The Chair of Council recommended that *'the investigation must be done by an outsider, and whoever carries out the task, should be independent and objective and Council must be prepared to support his/her report, if it is within the terms of reference'* (Council Minutes, 18 June 2008). This prompted members of Council to begin to interrogate their role and offer support to the Vice-Chair when he requested further information on a number of important financial and other governance related issues. It must be stated that this interrogation and self-reflection was not shared by all council members.

A brief summary of the issues raised in detail in the report are:

- a) There is no Audit Committee and no internal audit function. It is a fundamental tenet of corporate governance that these two functions be present in any organisation irrespective of its legal form. Council appeared to be unaware of this basic requirement and deferred to the VC's opinion that these were unnecessary in Higher Education. This last opinion was reflected in Council minutes. The internal audit function has been vacant since 2003.
- b) Council had not had sight of a set of financial statements. This is not specific to the new members of Council (those appointed in 2006) but also those appointed as early as 2001 admitted that they had never been allowed to see the financial statements. As it is a requirement of the Higher Education Act that Council approves the annual financial statements, it is not clear why Council did not discharge its duties appropriately in this regard. It was explained in interviews that the Chair of Council and the Chair of the Finance Committee were provided with the relevant front pages of the annual financial statements requiring their signature. These were signed without due oversight of the actual financial statements.
- c) The auditors were of the view that the Vice-Chancellor and not Council was their client. Council had never engaged with the auditors (refer to notes under "Auditors" further on) and had not requested an audience with the auditors. This may be partially explained by the absence of an Audit Committee as a structure. In the absence of an Audit Committee, however, the overriding authority on matters involving audits must therefore be the full Council. The Finance Committee did not focus on matters of audit and it is not conceivable that it could be a proxy for an audit committee.
- d) At the outset of every external audit, the client usually signs an external audit engagement letter, which sets out the terms of the engagement, from the auditor's perspective, and includes a general overview of how the audit engagement will be undertaken and, pertinently, what is specifically excluded from such an engagement. The authority for signing this letter is usually delegated to the Chair of the Audit Committee who signs on behalf of Council. In some cases the authority may be delegated to the CEO, but only if the engagement letter has served before Council and he/she has been delegated to do so. The Vice-Chancellor signed the external audit letter without proper authorisation from Council thus giving rise to the misguided opinion that he was, in fact, the client and not Council.
- e) After every audit, the external auditors produced a letter of their findings to the client (usually the Audit Committee, but in this case deemed to be the full Council). This letter is known as "The Management Letter". The usual process is to forward a draft of this management letter to the management to enable them to include explanations and comments on the points raised by the auditors. At this stage, it may be shown that the auditors were incorrect and an item may be removed from the management letter. The final version of this letter is then tabled at the relevant forum of the client. Good governance indicates that this letter first serves at an Audit Committee and then also at a full meeting of Council. Council members who have served since 2001 indicated that they had not been provided with such a letter. The 2007 management letter served at the Council of MUT at the behest of the Vice-Chair. The 2006 management letter is incomplete as no management comments have been included. Management has not regarded this as an important process.
- f) There is no evidence of any delegation of authority by Council to management. Good governance dictates that Council would delegate to management the financial

delegations setting the limits at different levels of the institution and finally to Council.

- g) In terms of the Higher Education Act, Council is the policy making body of the institution. There is no evidence that any new policies or amendments to existing policies have ever served before Council or one of its sub-committees. The Financial Policy Manual provided is dated 1996. Interviews pointed to the fact that the policies are no longer applied and that all decisions are referred to the VC.
- h) Council and sub-committee minutes are brief and not indicative of discussion and deliberation on the agenda items. Councillors indicate that they have no input in the setting of the agenda items as these are set and approved by the VC (includes the agendas of the sub-committees). Minutes are not signed and thus their approval status at Council is unknown. An analysis of the minutes indicates that it is difficult to trace continuity, as the sections on matters arising do not reflect actions taken or resolutions adopted at previous meetings.

### *Council Committees' Terms of Reference*

The assessment team requested the terms of reference of Council's sub-committees. Initially, no Terms of Reference could be accessed for the Finance Committee from the documents supplied prior to the first visit to MUT. After detailed probing, a complete 67 page document entitled "Committees: Information and Terms of Reference" was provided.

The document begins with a section called Council and includes certain extracts of the Higher Education Act:

- Paragraph 01/1/5 on page 4 states: "The Council may appoint one or more committees, which may, subject to the directions of the Council, perform those functions of council as the council may determine. The same paragraph goes further to state: "The council shall not be divested of responsibility for the performance of a function assigned to a committee in terms of this section." And then further in this MUT document: "Any decision taken by any such committee in the performance of any function so assigned shall be presented for ratification to the council at its first meeting after the decision was taken." Investigations into the governance at MUT indicate that this was not how the institution was governed.
- Paragraph 01/1/7 on page 4 states: ".....after negotiation with the employee organisations – the salaries, salary scales and allowances of academic staff and other employees employed at a technikon shall be determined by the council". This would seem to imply two things: (1) that, in the Act, there was an expectation that there would be employee organisations and (2) that only the council can approve salaries. This renders the 'omnibus resolution'<sup>1</sup> ultra vires.
- Paragraph 01/1/15 on page 6 states: " The council shall – (i) Cause to be kept correct records of all its proceedings and true and correct accounts of all money received and paid by or on behalf of the technikon and (ii) Once in every year and at the time and in the manner prescribed by regulation, submit to the Minister, in respect of the

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<sup>1</sup> The "omnibus resolution" passed on 2 June 1998 gives the Vice-Chancellor powers to act in respect of "functions of a management and administration nature which are ascribed to the Council [by the MUT Statute]"

preceding year, a report of its proceedings and of the management of the technikon, together with a statement of income and expenditure and a balance sheet audited by a person registered as an accountant and auditor in terms of the Public Accountants and Auditors Act....”

- Paragraph 01/1/16 on page 7 states: “A council may, subject to such conditions as it may determine, delegate any of its powers under this Act, or delegated to it in terms of subsection (1), except the power to draft statutes and rules, or assign any of its duties in terms of this Act or assigned to it in terms of subsection (1)....”. The reason for highlighting these areas is twofold: (a) It is not clear whether Council had access to this document as it clearly sets out the responsibilities of Council. (b) These sections of the document were omitted in the original set of documents provided to the assessment team.

The document has a section for the Finance Committee on page 1 and their responsibilities are identified as follows:

- Paragraph 012/1/1: “To advise Council on all matters within the jurisdiction of the council which have important financial implications”.
- Paragraph 012/2/2: “To advise Council on the recurrent and capital budgets and to monitor expenditure in accordance with those budgets”.
- Paragraph 012/2/3: “To establish operational policies, standing orders and procedures in connection with the Technikon’s financial administration”.

It is evident from reading the minutes and discussions with key members of council, including the Chair of the Finance Committee, that none of these terms of reference were adhered to over the years.

### *External Auditors*

The present external auditors have been delivering a service for the institution for several years and, it is the opinion of this assessment team that they have become complacent. There is doubt as to whether the auditors acted in terms of what is logically and legally required of them. On two separate occasions the auditors were asked as to who their client was. The first response was that it was the Audit Committee. On being informed that there was no Audit Committee, the response was that it was the CEO. It was pointed out to the auditors that the client is the Council of the university as stated in the Higher Education Act. The view adopted by the auditors was that the CEO had signed the audit engagement letter and that implied that the CEO was the client. The CEO may be delegated by Council to sign the audit engagement letter but Council remains responsible. A review of the Council minutes confirms that there was no such delegation.

The 2007 audit management letter without any management comments was initially provided to the team. The auditors subsequently provided the audit management letter with management comments. The 2006 and 2005 management letters were requested from the auditors, the 2005 letter was provided though the auditors were unable to provide a copy of the 2006 letter. The audit partner’s written response was that “... 2006 was never finalised, it was presented to management and responses were requested, but none were received”. The

lack of finalisation of the 2006 management letter is a serious oversight especially since similar issues surface in subsequent audits.

In the 2007 financial statements, the assessment team identified a R12 million error. The error was a disclosure issue and thus did not impact on the basic financials. The auditors did not identify in their audits that at least one of the councillors had day-to-day dealings with the institution and was therefore, by definition, a related party. They claim that they were not informed and that the Council minutes did not indicate any declaration of interest in contracts. Their view is based on the fact that the representation letter, in their opinion, clearly asks whether there are related parties and that management signed this letter without any indication of such, therefore they were justified in concluding that there were no related parties. The auditors reviewed the Council minutes and major contracts, of which the Executive Hotel was one. The same name appears in both the contract and Council list of members. Furthermore, the Executive Hotel is regularly referred to in their management letter and mention is made of the Council member concerned by name in this letter. It is a requirement in terms of General Auditing Standards that all related party transactions must be disclosed.

The auditors have signed off a set of financial statements for 2007 which includes a revaluation reserve. These assets had been written off in their entirety, which implies that there can no longer be a reserve in relation to an asset that no longer exists. In attempting to justify how this might be possible, the audit partner provided an extract of International Accounting Standard 16 (IAS 16) which did not justify the treatment at all and merely served to support the contention that the reserve should no longer have been in the balance sheet.

The above matters are raised, as there are concerns with the quality and thoroughness of the audit.



### *Finance Committee*

The Terms of Reference of the Finance Committee are to:

- Advise council on matters which have important financial implications;
- Advise council on recurrent and capital budgets and monitor progress against those;
- Establish policies, standing orders and procedures regarding financial administration;
- Perform functions referred by Council.

It was evident through discussion with important role players and a detailed review of Council and sub-committee minutes that these functions were not undertaken. The Finance Committee had not seen the Annual Financial Statements. The Chair of the Finance Committee, who signs one of the accompanying reports, is generally placed under pressure as the financials need to be submitted to the DoE at the same time. The practice has been to sign the financials without reading or observing the content. This is a serious breach of fiduciary duty and general governance principles.

The Vice-Chancellor and Principal is a full member of the Finance Committee and not just “ex officio”. This is evidenced by the fact that he regularly has acted as Chair of the Finance Committee in the Chair of the Finance Committee’s absence. This would raise serious governance concerns. From a perusal of the 14 sets of Finance Committee minutes made available spanning the period October 2005 to August 2008, it is evident that the CEO chaired on 5 occasions – more than one third, even though, on one of those occasions, the Chair of Council was present. On one occasion the Vice Chair of Council chaired. That means that the Chair of the Finance Committee, in fact, only chaired 8 of the 14 meetings and the Vice-Chancellor chaired the remainder of the meetings. It is a further indictment that between 8/6/06 and 28/2/07, a period of eight and half months, the Finance Committee did not meet. This observation is based on the Minutes supplied.

### *Emoluments Committee*

The Emoluments Committee’s key function is to approve increases and bonuses for the CEO. We were advised that the Chair of the Emoluments Committee (Mr Redhi) did not attend any of the meetings and that no minutes of this committee had ever been seen by any external member of Council and that minutes were “not allowed” to leave the meeting room. In addition, a perusal of these minutes indicated that the minutes were never approved at a subsequent meeting of this Committee. The Council minutes of 1982 established this committee but no terms of reference were available.

### *Tender Committee*

There is no evidence that this was in any way a functional committee even though this is ostensibly an official sub-committee of Council. Upon enquiry, no minutes of this committee could be traced. One file labelled “Tender Committee” which was traced to the CEO’s office had as its last document date February 2006. No documents relating to this Committee could be traced after this date, even though numerous significant contracts have been awarded or renewed since that date. There is in excess of half a million rand worth of equipment paid for by the University for the Vice-Chancellor’s farm. Requests for the tender documents for these

purchases were unfruitful with only invoices made available. It is therefore doubtful whether there were actually any tenders conducted.

### *Contracts*

There are many instances of contracts on file where the signatures are incomplete. This could render the contracts unenforceable in a court of law. In the event of an unsigned contract being in place, a question can be raised around the validity of payments being made to a contractor without a valid contract being in place. Payments based on an invalid (unsigned) contract, where payments are also significant, are a serious breach of governance. A review of the audit management letters, which are available, will confirm that the matter of unsigned contracts was raised by the auditors on a number of occasions.

### *Finance Department*

The duties within the Finance Department must be expedited with sensible and reasonable internal control procedures. Due to the downscaling of the skills in the HR department (see HR report) the Finance Department became the custodians of all data capturing relating to HR, for example, capturing new appointments, terminations, salary adjustments etc. Payroll resides within the Finance Department thus increasing the functions to be undertaken by this department. The external auditors finalised a report regarding a staff member who had fraudulently adjusted payroll information.

Concerns raised through the interview process include: the filling of vacancies is a lengthy process (see HR report) and that the process for filling vacancies was on several occasions bypassed by the VC.

The institution runs separate systems for the general ledger, payroll and student related issues. As a result, there are significant interface problems for which the finance department specifically and the institution in general do not have the skills to resolve. The absence of an integrated ERP system creates problems in data production. Furthermore, the institution upgraded to one of these systems in 2008 and information was severely corrupted and compromised. This calls into question the planning and change management skills in-house, which are obviously lacking. As a result, the institution made extensive use of external consultants whom the Vice-Chancellor refused to pay. The consultants ceased offering their services but after a lengthy hiatus the consultants were eventually paid and resumed their activities. This was one of the primary reasons for the delay in the finalisation of the 2007 audit. In addition to the lack of skills in-house to manage this process, it is imperative that the auditors sign off that the information which existed as closing balances on the old system was exactly the same as the information reflected as opening balances on the new system. From the audit management letter, it is obvious that the auditors were not involved in this process at all. As a consequence of the above, no payroll reconciliation was performed at all in 2007. It is not clear as to the basis on which the auditors were satisfied with regard to the validity of payroll information. However, this is a fundamental control measure and the fact that these were not done must call into question the integrity of the data. In addition all creditors' accounts are not reconciled monthly, which is another basic internal control requirement.

### *Specific Transactions*

There are several transactions that are deemed worthy of further investigation. Details are provided a separate report on Finance.

### 3.2 Governance and Management Structures and Efficiencies

This section of the report provides an overview of the governance and management structures and efficiencies of the university. A detailed account is available along with the list of people interviewed.

Good corporate governance practices are not followed. Over a sustained period since the previous Independent Assessor's report in 1999, the Council has largely failed to exercise its responsibilities and obligations. Admittedly in the recent months there were emerging signs of alertness on the part of The Council. Council has permitted the Vice-Chancellor and those that execute his requirements to create a culture on campus that is pervaded by:

- Well-articulated fear of injustice, acts of retribution and victimisation;
- The significant transgression of individual rights;
- Selective favouritism and non-procedural promotions and appointments;
- Intimidation of dissenting staff and curtailment of academic freedom;
- Financial deprivation for the core business and the granting of largesse to allegedly complicit personnel and their cost centres;
- Nepotism;
- Inappropriate budgeting and expenditure procedures;
- Inconsistency in implementing procedures and in decision-making;
- The allegedly paranoid pursuit of critics and uneven use of powers of suspension and disciplinary procedures, including the use of illegal practices to entrap particular members of staff and students.

Until recently the Council has for several years permitted the Executive Committee of the Council to exercise all of its powers and functions without apposite limitations, oversight or ratification. The Finance Committee has exercised some of Council's reserved powers without ratification with insufficient attention given to budget versus actual reports. Details have been outlined in the section on Finance. Budgets are only announced in the middle of the current financial year or even later and appear not to have been approved by Council. Annual budgeting for all approved posts provides a misleading perception of the financial strength of the institution while a disproportionate number of posts are simply not advertised. This practice also creates space for exceeding budgets in particular cost centres with impunity. Council only receives and notes the minutes of most of its committees but, with the exception of recommendations or proposals from the Staffing Committee regarding the creation of new posts or the re-grading of existing posts, almost without exception gives little attention to the work of its standing committees.

The "omnibus resolution" passed on 2 June 1998 gives the Vice-Chancellor powers to act in respect of "functions of a management and administration nature which are ascribed to the Council [by the MUT Statute]"; this decision has been implemented without the normal

reporting requirements that would provide Council members with assurance on the appropriate exercise of the powers. Council has never reviewed this resolution. The preamble of the minute regarding the "omnibus resolution" uses the phrase "confirming a conventional practice": variations on this phrase are incorporated in many of the minutes of Council and its committees whenever assurances are sought (mostly by external members of the committees) regarding matters of governance or management as an explanation for such matters not serving before one of the governance structures. Until recent months such a query by a committee member was thus quashed.

Were Council reviewing committee membership annually and, every three to five years, assessing the validity of each committee's remit, Council would avoid ignoring the Institution's statute, which requires the appointment of a Vice-Principal (Administration) by provision in terms of the definition of the term "Senior management", or alternatively determine that such a position is redundant and seek the amendment of the Statute; instead the post has been vacant for some four years and has created administrative blocks and disproportionate control over day-to-day operational matters by the Chief Executive Officer.

The fact that the committees of the Institution are listed in the Statute dictates that those named must operate with the laid down membership: the Vice-Principal (Administration) is required to serve as the Secretary to the Executive Committee of Council (Section 20.1(b) onwards of the Statute), the Finance Committee, the Building Committee, and the Staffing Committee. The Terms of Reference of the statutory Committees were approved in the 1990s but not updated since despite the need for this. The need to create new structures (eg Audit Committee) has also simply not been addressed. The Emoluments Committee has its origins early in the history of the institution, circa 1982; for years its minutes were properly kept, being approved at the next meeting of the Committee; the Committee, unlike all the other Council committees, has no defined remit; the practice that has developed in the last decade is to approve salary adjustments that are neither limited by the cost centre budget/s nor comparable with the overall University approach for the staff not in Grades 1-4; there is also the practice of granting so-called performance bonuses as a percentage of the annual package for the Vice-Chancellor without pre-agreed and recorded performance targets, and in turn the Vice-Chancellor independently determines the performance bonuses of the other executive and senior managers, also without agreed performance requirements. The members of this Committee have for several years accepted the practice of minutes literally being circulated at the start of the next meeting and acquiesced to these copies being collected by that Committee's minute secretary; members of the Committee therefore have no means of preparing themselves prior to a meeting, nor of having their own documents to refer to thereafter. The chairman of the committee does not sign approved minutes.

The Building Committee has in the last decade approved significant capital expenditure despite statutory limitations on what a Council is empowered to do. The question of refurbishments carried out by the University at the Section 21 Company owned Executive Hotel is a further example of peculiar practice. The Tender Committee acts on an ad hoc basis and good practice does not appear to be followed in that some procurement occurs without tenders and there are not laid down procedures about limitations on what may be procured without tender. Frequently, appointed companies do not enter into written agreements as there is reluctance by the Vice-Chancellor to sign such documents. The Common Law of Meetings dictates that any member of Council who has an interest of any kind in regard to a matter that serves before Council or any of its Committees should declare

that interest before the matter is discussed. In the absence of a specific code of conduct for meetings the common law applies. Such practice is legitimately both a moral and ethical expectation. Furthermore, even when one is the Vice-Chancellor, recusing oneself from the chair, when an individual with whom one has an intimate relationship is being considered for appointment or promotion, is an imperative. Equally recusing oneself, when assessing or reviewing a disciplinary allegation against an immediate family member, is also apposite. However, perspicacity is not evident from the facts.

The dismantling of the Foundation has not resulted in the amendment of the set of Terms of Reference. The disappearance of one of the Foundation's committees, the Investment and Finance Committee, raises the question about the management of the financial assets of the Institution.

The Statute of the MUT (published in Gazette No 20272 of 2 July 1998) is out of date and contains provisions that are consequently redundant, invalid, contradictory and ambiguous. Section 42 of the Statute reveals that the previous Statute which was published by Government Gazette No 17106 on 19 April 1996 (as amended) was repealed. It is out of date *inter alia* as a result of the official change of name of the Institution in Gazette No. 1089 of 16 November 2007 to the Mangosuthu University of Technology. It is invalid in that, for example, it provides for the election of a Council secretary whereas the Higher Education Act of 1997 was amended by Act No. 55 of 1999 to require the Council to appoint a Registrar as the Secretary to the Council (Section 26(4) (b)). It is contradictory in that the definition of the "Foundation" in Section 1(1) has the right of membership on the Council in Section 10(3) (b) and an electoral procedure is promulgated in Section 15, yet the "Foundation has been dismantled. This reality also means that on paper Council is potentially short of its 60% external membership balance. It is ambiguous, for example, when "executive management" is defined (Section 1(1)) and Section 21, but in Section 31(1) (a) a constituency of the Institutional Forum is termed "management", a noun that is not defined.

There are also weaknesses of drafting such as in Section 10(3) (a) which precludes the election of an employee who is a member of Convocation, but does not preclude a current student who is already a member of Convocation from being elected, whereas the intension of this provision is to ensure that the Convocation member is an outsider. The Statute is also unusual in that it contains several elements that one would not normally expect to have included: in particular it is inappropriately restrictive to gazette so many standing committees of the Academic Board and the Council, and their joint committees. A broader provision stating that the bodies may appoint such other standing committees as required may be appropriate, provided there is regular review of committee membership and of the terms of reference of standing committees.

The selective inclusion of some conditions of service is odd as are the matters of staff misconduct, procedures, disciplinary steps, appeal and matters of inefficiency or incompetence. Within these provisions the power accorded the Vice-Chancellor to have the right to alter the sanction recommended by the presiding officer of a hearing is unusual, as the entire hearing has been conducted by the presiding officer, who is better placed to impose an appropriate corrective intervention. The allegation that the Vice-Chancellor attempts retrospectively to cajole a presiding officer to alter a finding or alter the proposed sanction is grossly inappropriate if true, and indicative of prejudicial intervention. In the instances reported, the Vice-Chancellor is alleged to have adopted the principle of retribution rather than a commitment to the use of disciplinary procedures for corrective purposes.