



NOTICE TO THE UNIVERSITY COMMUNITY

DISCIPLINARY HEARING – MR FAZEL KHAN (KHAN)

The University instituted disciplinary proceedings against Khan for misconduct. An Attorney, Ms Christine Qunta (Qunta Attorneys) presided over the hearing. Khan was found guilty of making false statements to the press concerning the University, its management and employees associated with UKZNdaba, thereby bringing them into disrepute. The Presiding Officer imposed a final written warning for this misconduct.

Khan was also found guilty of having disclosed confidential information relating to a task team report. The Presiding Officer imposed a sanction of summary dismissal in respect of this misconduct.

Khan is now summarily dismissed, he has been informed of his right to appeal.

Mr P F Finden
Employee Relations
26 April 2007

DECISION IN THE DISPLINARY HEARING OF MR FAZEL KHAN OF THE UNIVERSITY OF KWAZULU NATAL HELD ON 19 OCTOBER - 27, 28 NOVEMBER 2006

Introduction

Mr Fazel Khan is a lecturer in the school of sociology and social studies at the University of KwaZulu Natal (the University). The University charged Mr Khan with 2 (two) counts of misconduct based on the charges set out below.

Charge 1 – Dishonest conduct

In the June/July 2006 edition of the UKZNdaba, a University newspaper, an article entitled 'Local film', accompanied by a photograph, was published in good faith in the belief that both accurately portrayed the correct factual position. In commenting on the said article and/or photograph, you acted dishonestly by making false statements for publication in the press, the particulars of which are set out in the schedule annexed hereto, thereby bringing the University, its management and employees associated with UKZNdaba into disrepute and/or thereby acting disloyally and in breach of the fiduciary duty which you owe to the University as its employee.

Alternative Charge 1 – Gross negligence

In the June/July 2006 edition of the UKZNdaba, a University newspaper, an article entitled 'Local film', accompanied by a photograph, was published in good faith in the belief that both accurately portrayed the correct factual position. In commenting on the said article and/or photograph, you acted in a grossly negligent manner by making statements for publication in the press which proved to be unfounded and untrue, the particulars of which are set out in the schedule annexed hereto, thereby bringing the University, its management and employees

associated with UKZNdaba into disrepute and/or thereby acting disloyally and in breach of the fiduciary duty which you owe to the University as its employee.

Schedule to Charge 1 and Alternative Charge 1

Count one

Date: 15 September 2006

Newspaper: Mail and Guardian

Comment:

There was a clear decision that you should not be in the UKZNdaba and this was dirty revenge for your actions during the strike.

You further informed David Macfarlane, a journalist of the Mail and Guardian, that the University was not prepared to contribute towards your travel costs to Turkey because of your involvement in the staff strike earlier in 2006.

(While the former comment was published in the newspaper, the latter was not.)

Count two

Date: 18 September 2006

Newspaper: The Witness

Comment:

The University management was using the UKZNdaba as their propaganda machine.

The management of the University had used vulnerable Ms S Giles, an employee of the University, to get back at you because of your involvement in a strike at the University.

The University staff had lost confidence in the UKZNdaba as they see it as a mouthpiece for certain faction of the management.

Count three

Date: 19 September 2006

Newspaper: The Mercury

Comment:

You believed that you had been targeted.

You are convinced that the management of the University does not want you to be promoted or published in UKZNdaba.

Your removal from the photograph was evidence of 'thinking at the top'.

The admission by Giles that she was responsible for your airbrushing from the photograph was probably the current climate at the University that had pressured her to do it.

The University rated the level of conduct as "*very serious*" in accordance with Annexure "A" of the conditions of service applicable to the University.

CHARGE 1

Charge 1 arises from certain statements made by Mr Khan to the Witness newspaper on 18 September 2006 and to the Mercury of 19 September 2006 as well as to the Mail and Guardian published on 15 September 2006. A further statement was made to a journalist David MacFarlane of the Mail and Guardian that was published.

UKZNdaba is a University newspaper published under the auspices of the Public Affairs and Corporate Communications Department. An editorial collective is responsible for the publication of the newspaper. An article entitled "*Local Film*" accompanied by a photograph appeared in the June/July 2006 edition of UKZNdaba. The article concerned a documentary about shack dwellers in an informal settlement which was directed by Ms Sally Giles. It appeared that she also took the photograph that accompanied the story which was the subject of much of the controversy which led to this disciplinary hearing. Mr Khan was the researcher in the documentary and travelled with Ms Sally Giles to Turkey where the documentary was screened at a film festival. From the evidence, it is clear

that his name appears in the credits of the documentary. Ms Giles also filmed and edited the documentary whilst Selvan Pillay handled the sound.

The photograph that appeared next to the article was taken in Istanbul, Turkey next to train station. In the original photograph Mr Khan appears with a number of other people including Ms Sally Giles and Selwyn Pillay. The photograph that appeared in the UKZNdaba however did not have Mr Khan in the picture. Ms Sally Giles admitted that she airbrushed Mr Khan out of the picture. Her reasons was that the article dealt with the technical personnel.

This airbrushing became the subject of the 3 newspaper articles which the University felt were instigated by Mr Khan and in which he made the false or alternatively grossly negligent statements regarding the University. It therefore decided to charge him.

Both the University and Mr Pitthouse agreed to deal with all the statements contained in the newspapers together. It is important however for reasons that will become clear to deal specifically with the Mail & Guardian of 15th September 2006 before going on to the other statements.

The Witness of 18 September 2006 and Mercury of 19 September 2006.

The following statements are contained in count 2 and 3:

1. The University management was using UKZNdaba as their propaganda machine.
2. The management of the University has used vulnerable Ms S Giles an employee of the University to get back at Mr Khan because of his involvement in a strike at the University.
3. The University staff had lost confidence in the UKZNdaba as they see it as a mouthpiece for certain faction of the management.

4. Mr Khan believed that he had been targeted.
5. The management of the University does not want Mr Khan to be promoted or published in UKZNdaba.
6. His removal from the photograph was evidence of "thinking at the top".
7. The admission by Ms Giles that she was responsible for the airbrushing from the photograph was probably because of the current climate at the University that had pressured her to do it.

It seems that the report that came out in the Mail & Guardian on 15th September 2006 resulted in Mr Khan amending one of his allegations. He no longer implied that the University management was responsible for keeping him out of UKZNdaba. He admitted that Ms Giles was responsible but that she had been used to get back at him because of his involvement in the strike at the University in February 2006 (the Witness) and that it was probably the current climate that pressured her to do it.

It is not clear when he spoke to the journalist at the Witness and the Mercury or for that matter the Mail & Guardian earlier on. It is clear however that by the morning of 15th September 2006 (leaving aside his earlier knowledge that Ms Giles was responsible for the cropping and that he had been informed on the 14th of the circumstances of the omission from UKZNdaba) he knew that Bhekani Dlamini, Deanne Collins and Professor Chetty had no knowledge of his exclusion from the photograph or his involvement in the documentary. Yet he persisted in making these allegations on the 18th and on the 19th of September to the Witness and Mercury respectively. On the 14th September, having been given the information by Professor Chetty of the real circumstances of the omission from UKZNdaba, Mr Khan made no attempt to contact the journalist at the Mail & Guardian to correct the story, even though it may have been passed the deadline. He certainly did not lead any evidence to this effect. Similarly no attempts were made to set the record straight in the Witness or the Mercury

having been provided with the information regarding the cropping of his photograph. Instead in a slightly amended form he persisted with his statement that he was the victim of management who was using Ms Giles and that the management does not want him to be promoted or published in UKZNdaba and the removal of the photograph was evidence of his being targeted by management.

Mr Pitthouse for Mr Khan was at pains to show that given the climate of tension between management and the unions of which Mr Khan was a member. Mr Khan made the comments in good faith and genuinely believed them to be true. For the reasons I have set out above this submission is not persuasive. There can be no doubt that from the evidence submitted that there are tensions at the University between the unions in particular COMSA, and senior management. It also appears from the evidence that Mr Khan has been particularly active in the union and that there existed between him and Professor Chetty some tensions.

It seems though that a reasonable person in Mr Khan's position would have at the very least gone to Ms Giles once he had recovered from his shock at being excised, as soon as she informed him or at the very least after the publication, to raise objections. Evidence led by both Mr Khan and Ms Giles indicated that they had a friendly relationship. In such a conversation he could have established from her what the reason was for his exclusion. What is puzzling too is that the UKZNdaba came out in June/July and the objections were raised in the newspapers around September 2006, approximately three months later.

In view of his knowledge of the factual situation prior to 15th September and certainly after 15th September Mr Khan knew that the people associated with UKZNdaba did not know about his involvement and were not involved in the cropping of the photograph but despite knowing this persisted in making these statements. There was no reasonable basis for the statements that he made or for believing that they were true because he already knew that in fact they were

not true. Mr Pitthouse has suggested that Mr Khan's criticism of aspects of the governance of the University is an exercise of his freedom of expression and necessary for the strengthening of democratic ideals. There can be no question that in our new democratic dispensation, especially at institutions of higher learning that there should be a free flow of ideas and political engagement by various stakeholders within the University. It is also the case that the encouragement of debate and the right to freedom of expression does not authorise the making of false statements.

Not all of the statements in the Witness and Mercury should be regarded as false statements. Indeed it is my view that however unpalatable it may be to the University there are statements which constitutes the opinion of Mr Khan are opinions that he would probably hold honestly. These two statements that fall into this category are the statements that the University management was using UKZNdaba as their propaganda machine and that the University staff had lost confidence in the UKZNdaba as they see it as a mouthpiece for certain factions of the management. This does not mean that these statements are true, simply that they are his opinions. The other statements are factually incorrect and was made with the full knowledge that they are factually incorrect.

ELEMENTS OF THE CHARGES

It is common cause that Mr Khan did make the statements in counts 1, 2 and 3. Mr Khan's representative, Mr Pitthouse in his closing submission states that Mr Khan merely answered questions from the journalist. This is neither here nor there because whether Mr Khan initiated the contact or merely responded to questions, it is the content of the statements that is at issues and not how they came to be made.

Bhekani Dlamini wrote the article in question after conducting interviews with Ms Giles and Mr Pillay. He testified that the focus of the articles was on the two

individuals and their technical contributions and not the film itself. He also testified that he did not know at all that Mr Khan had been involved in the film.

Since there is common cause that the statements were made, what remains to be decided in relation to charge 1 is whether the statements made were made dishonestly firstly. Secondly whether the statements brought the University, its management and employees associated with UKZNdaba into disrepute and/or whether Mr Khan acted disloyally and in a breach of fiduciary duty which he owes to the University as an employee.

The University asserts and led evidence that the article and the photograph accompanied by it was published in good faith and that there was no knowledge at the time of publication on the part of the UKZNdaba staff that Mr Khan was in the original photograph. It seemed that in relation to the article Mr Dlamini did not know that Mr Khan was involved in the making of the documentary when he wrote the article.

Deanne Collins who is the acting publications manager in Public Affairs and Communication Department and the editor of UKZNdaba was also called as a witness. She edits the stories that the journalists write. Professor Chetty is the executive director and he oversees all university publications. He approves the contents and writes the editorial. She also testified that she did not know of Mr Khan's involvement in the film or that he had been airbrushed out of the picture. She specifically indicated under cross examination that it was extremely regrettable that it had happened and if she knew of his involvement she would have ensured that it was addressed.

It is common cause that none of the people involved in the article and photographs were aware of Mr Khan's involvement until after the publication.

The question then is whether Mr Khan's statements to the newspapers were

dishonest. A critical question in this regard is whether at the time of making the statements Mr Khan knew that the statements he was making were not true. With regard to all three counts under charge 1 Mr Pitthouse on behalf of Mr Khan submitted that the statements were mere opinions and/or speculation on his part. As will be seen when the articles are read, most of the statements made by Mr Khan are decisive. (There are two statements that can be regarded as opinion) Neither Mr Pitthouse or Mr Khan during his evidence disputed the veracity of the statements and in fact they admitted that the quotations were correct. The direct quote from Mr Khan in the Mail & Guardian is:

"There was a clear decision that I shouldn't be in UKZNdaba and this is a dirty revenge for my actions during the strike".

The article then quoted Mrs Collins:

"However, the editor of UKZNdaba Deanne Collins, said Giles had supplied the photo, caption and information for the article, and "by her own admission had airbrushed Faizal Khan from the photograph. She claims that she did this in order to highlight the contribution of the two technical members of staff." At first barred from speaking to the M&G, Giles later confirmed this version of events."

"There has been not editorial decision to exclude Khan from UKZNdaba, Collins said."

According to the evidence led by Professor Chetty an enquiry from David MacFarlane the journalist who wrote the Mail & Guardian story, was received by the University on 13th September 2006 addressed to Professor Chetty and Ms Collins. The request was sent at 11.50 am and a response was requested by 4.00 pm that afternoon. The Public Affairs and Corporate Communication departments then called a meeting on the same date at approximately 15h00 to

discuss the enquiry by David MacFarlane. This meeting was to discuss the Mail & Guardian article. Deanne Collins was then supposed to draft a response to Mail & Guardian which she did which was quoted as shown above.

Professor Chetty, further testified after the meeting of 13 September where both Sally Giles and Deanne Collins as well as Bhekani Dlamini were, information regarding the exact circumstances of the airbrushing was given to Mr Khan on the 14th. If the only source of the correct information was that which came from Professor Chetty, then perhaps the argument that it was too late to correct it in the Mail & Guardian could be accepted.

However Mr Khan had been aware prior to the 13th September that Sally Giles had done the cropping in the photograph. She had in fact informed him while he was in her office and showed him how she had done it. He had by his own admission laughed when she informed him. He conceded during cross examination that he did not raise any objection to her though he was unhappy about being left out of the photograph. It is not clear whether at this point he was aware that the article would be published in UKZNdaba. What is clear however is that at the time that the article was published in June/July 2006 Mr Khan knew that the airbrushing and cropping had been done by Ms Giles.

He did not go back to Sally Giles or Deanne Collins or Professor Chetty to object to his being left out of the picture and the article or to request reasons why it was done.

The statement directly attributed to Mr Khan makes no mention of his knowledge that Ms Giles was responsible for the airbrushing but instead in a quite categorical manner states that there was a clear decision that he should not appear in the UKZNdaba and the cause for this was revenge for his actions during the strike. It is further clear from the email from David MacFarlane, that he did not mention this in any conversation that he would had with David

MacFarlane leading to the article. It is difficult to believe that the concealment of this fact was due to a mistake or in fact a loss of memory as it is quite clear from his own evidence that he was extremely upset about Sally Giles actions. I therefore find that Mr Khan knew at the time that he made the statement to the Mail & Guardian that it was not true.

Mr Pitthouse on behalf of Mr Khan argued that given the tensions existing at the University between specifically Mr Khan as a union member and some members of the management it was reasonable for him to have a suspicion or "belief". The difficulty with this argument is that both because the conversations between Ms Giles at the time that she informed him of the cropping and the information given to him on the 14th which was in fact carried in the Mail & Guardian, he had no factual basis for having such a belief. It was clear that Mr Khan wanted to convey to Mr MacFarlane only such facts which would show that he was being victimized for participating in the strike in February 2006.

In the email from David MacFarlane dated 13 September, the latter states the following:

"Mr Khan tells me that Professor Chetty authorised payments towards the travel costs of Sally Giles and Selvan Pillay, but that he (Professor Chetty) told him (Mr Khan) that the university would not contribute towards his costs because of Mr Khan's involvement in the staff strike earlier this year." (Can you comment)

The issue of funding was dealt with under cross examination of Mr Khan. It was clear then that Mr Khan and Ms Sally Giles as well as Mr Pillay came from different departments. The latter two were technical staff members and therefore were entitled to funding from a different department than that of Mr Khan. So while Professor Chetty contributed to funding for their trip to Turkey he was not the person responsible for authorising an academic research grant.

Mr Khan knew this but implied that Professor Chetty is the person to authorise payment for his trip. This is not the only problem with paragraph 3 of David MacFarlane's email. The quotation of Mr Khan contradicts the factual situation. Mr Khan stated during the hearing, that he had no direct contact with Professor Chetty regarding funding. Certain reports were made of hearsay evidence in this regard, which was inadmissible.

There was no truth in his statement and to David MacFarlane regarding funding at the time that Mr Khan made it he knew that it was not true. While it was not published in the newspaper, charge 1 relates not only to statements that were published but the making of false statements intended for publication. In conveying this to MacFarlane it is reasonable to believe that Mr Khan intended it for publication.

The submission by Mr Delaney of the FXI dealt with broad issues of freedom of expression which dealt with policies rather of the FXI than the facts faced by the hearing or with legal aspects. While in part it restates some constitutional principles generally the submissions did not assist in resolving the issued at hand.

Bringing the University in Disrepute

The second leg of the question is whether statements made brought the University its management and employers associated with UKZNdaba into disrepute thereby acting in breach of the fiduciary duty which Mr Khan owed the University as an employee. Besides consideration of the statements extracted in the charges, the tenure of the articles were quite negative. Taking the three articles together the following views of the University were given (expressly or impliedly).

- The act of removing Mr Khan from the picture was Stalinist)and very similar to what Stalin did to Trotsky).
- The UKZNdaba article deliberately tried to conceal political overtones of the documentary;
- UKZNdaba was a propaganda machine of the University management;
- Critical academics are victimized;

It is clear from this that the publicity was quite negative for the University and harmful to its reputation. A reasonable person reading the information would come to the conclusion that the University environment is repressive and that it is without the foundational values of the Constitution. In this regard the mention of Stalin is particularly damaging as Stalinism is broadly understood by the average reader as the antithesis of democracy.

It is established law that an employee stands in a position of trust viz-a-viz an employer and has a fiduciary responsibility towards his/her employer. This fiduciary duty entails a duty of good faith and a duty not to work against the employer's interest or in the present instance, not to make untrue statements that harms the reputation of the University. The Constitution has not changed this common law position.

FINDING CHARGE 1

On the evidence submitted at the hearing, I find that Mr Khan made false statements as set out in counts 1, 2 and 3 (with the exception of statement 1 and 3 in count 2 which I consider to be opinions). He made these false statements knowing them to be false. In doing so he breached his contractual duty to the University as his employer which breach brought the University, its management and employees associated with UKZNdaba into disrepute.

CHARGE 4

Charge 4 relates to the leaking of a document allegedly by Mr Khan to the Mercury. The charge is set out as follows:

Count four – Disclosure of confidential information

In breach of your duty to keep a report of the task team dealing with management and related issues confidential, you wrongfully disclosed the contents of the report, or part thereof, in circumstances where you were expected to maintain the confidentiality of the report. As a result, the said contents were published in *The Mercury* of 25 September 2006 in an article entitled ‘**UKZN staff ‘do not trust executive’’**’.

Alternative Count four – Breach of duty of good faith

In breach of your duty of trust and good faith you owe to the University as its employee, you caused the said confidential report, or parts thereof, to be published as aforesaid which resulted in prejudice, or potential prejudice, to the administration of the University.

A task team was set up sometime in April 2006. The task team was made up of members of the University executive, members of the unions. It appears that this was an effort to deal with some of the tension between management and unions on campus. During Mr Khan and Ms Nortje's evidence, both stated that there was an important process going on to rebuild the trust between the different constituencies on campus who had been locked in conflict previously. The task team was appointed by the University Council and the report was supposed to be submitted to Council before it was made public. It is apparently common policy and procedure that delegated authority from Council about any activities is confidential. The setting up of the task team was regarded as a delegated

authority matter and therefore confidential. The task team was set up to try and restore trust and deal with the tension which arose out of the strike in February 2006. Mr Khan was a member of the task team.

It was intended that after the Task Team had completed their work and written a report, the report would be submitted to the Council meeting on 1 September. Thereafter it would appear on the inner web of the University. Professor Malekgpura Makgoba, Vice-Chancellor of the University was called by the University and read from minutes of the first meeting of the Task Team held on 20 April. This showed an agreement amongst task team members relating to dissemination of information to UKZ community during the course of the task team deliberations. It stated:

Confidentiality should be maintained by individual task team members who are bound by the joint agreement (sic should respond jointly at all times.)

According to Professor Makgoba there was also an agreement amongst members of the Task Team that even though they belong to different constituencies e.g. unions the executives, they could not disclose the report to the individual constituencies before it had been seen and discussed by Council. Contrary to this understanding their report was leaked to the Mercury which published an article on the report on 25 September 2006.

The University called Ms Petronella Nortje who was a member of the Task Team. She was tasked with drafting a response to the Mercury article and she testified that she checked with Mr Khan if he was happy with the document. She testified that it was in the course of this discussion that he told her that he was the one who leaked the document. She indicated that he said it in a matter of fact way although she could not remember the exact words.

Mr Pitthouse firstly cross-examined her on her assertion that she was the Vice-President of COMSA. As far as he and Mr Khan was concerned she had been suspended. She admitted that there were tensions between her and the executive of COMSA relating to a whole number of issues such as financial administration. While she admitted that she had received a letter of suspension, she did not regard it as binding and so still regarded herself as the Vice-President of COMSA. It seems that her statement was not a dishonest statement but a disagreement with the procedure that was followed in the purported suspension. Mr Pitthouse also sought to indicate that there was a bad relationship between Ms Nortje and Mr Khan. Leading from this he questioned whether in view of this, Mr Khan would make a potentially damaging admission to her. Secondly he argued that she may have an ulterior motive for implicating Mr Khan. In his submission he also indicated that during her testimony " she was plainly very anxious, emotional and in the particular context of the hearing, unstable."

During cross examination Ms Nortje stated that her differences were in fact not with Mr Khan perse but with the President of COMSA, Professor Mantzaris. She also indicated that she continued to have a professional relationship with Mr Khan despite the obvious tensions that there were between her and the executive of COMSA. Mr Khan did not dispute this although he said that he "would not have a beer with her." Ms Manoin and Professor Mantzaris also confirmed that there was tension between Mr Khan and Ms Nortje.

The reason why such tension would be relevant would be precisely for the reasons given by the Mr Pitthouse. In response to Mr Pitthouse's question as to why Mr Khan would confess to her if there was tension, her response was that Mr Khan was wont to speak before thinking and may not have thought through this statement before he made it. She gave examples of impulsive actions on the part of Mr Khan. One of the examples she gave was of him writing emails with other people's names at the bottom, impliedly suggesting that he would have

forgotten to remove the name. Mr Pitthouse did attempt to give context to this through Mr Khan stating that sometimes people use each others computers and in the instance of Professor Mantzaris, this may have been the case.

In trying to show that the relationship between her and Mr Khan had not broken down to the extent that Mr Khan had suggested, Ms Nortje stated that he had in fact requested her to represent him at this disciplinary hearing. This was not challenged by Mr Pitthouse or Mr Khan.

Contrary to what Mr Pitthouse stated, I found Ms Nortje a credible witness who answered questions quite confidently and with little hesitation despite probing cross examination from Mr Pitthouse. She was aware of at least three other people who she said knew that Mr Khan had leaked the document but this was not relevant or admissible as the persons were not called with the exception with Ms Jill Manion. Ms Manion testified that after the leaking of the document Mr Khan told her that it was Karl Marx who leaked the document. She stated under cross examination that at that stage they were not joking but she introduced a jocular tone when she asked how Karl Marx can get access to email. She stated that she assumed that he was referring to himself and persisted with this under cross examination. Ms Manion was clearly in a difficult situation and this became apparent during her testimony as she was testifying in a disciplinary hearing of a colleague in a union that she had worked with quite closely. She was a little bit evasive when she was asked under cross examination by Mr Pitthouse whether she had informed the Vice Chancellor that she assumed Mr Khan was the one who leaked the report. She conceded however that she could have.

While it was clear that there was tension between Ms Nortje and officials of the union including Mr Khan, her testimony that it had not broken down irretrievably was credible. I have no reason to doubt the veracity of what she was saying, namely that Mr Khan indicated to her that he had leaked the report. Mr Pitthouse was not able to shake her under cross examination.

While Ms Manion testified that she assumed when he said that it was Karl Marx it was in fact Mr Khan who had leaked the document, was not corroboration as such, it is supportive of the likelihood that in fact Mr Khan made the comment to Ms Nortje and did in fact leak the document.

FINDING IN RELATION TO CHARGE 2 COUNT 4

I find that Mr Khan had a duty to keep the report of the Task Team confidential and that he breached this duty by disclosing the contents of the report to the Mercury newspaper of 25 September 2006. While it is framed as an alternative count, the disclosure of the confidential report is also a breach of the duty of trust and good faith that Mr Khan owes to the University as his employer. The harm caused relates not only to the contents of the article in the Mercury but also the harm caused to the rebuilding of the relationship of trust between management and unions and other stakeholder holders within the University.

The Protected Disclosures Act No. 26 of 2000

The defense sought to use the Protected Disclosures Act as a defense in respect of both charges. To be utilised as a defense, it must first be shown that "*the disclosure*" contained in the charge 1 and 2 fall within the ambit of s 1 of the Act. The disclosures which fall within the ambit of the Act are the following:

- Where a criminal offense has been, is been or is likely to be committed
- Failure to comply with any legal obligation to which that person is subject
- Where a miscarriage of justice has occurred or is likely to occur.
- Where the health or safety of an individual has been or is likely to be endangered

- That the environment has been or is likely to be damaged
- Where unfair discrimination in terms of the Promotion of Equality and Prevention Unfair Discrimination Act is involved.
- Where any of the above matters are likely to be concealed.

Since the disclosure of the information contained in charges 1 and 2 do not fall with any of these categories, the Protected Disclosures Act is not applicable.
