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CHAPTER 1

THIS INQUIRY – THE CAUSE

1. 12.9.06 was the date of the Shaw Prize banquet. Prof Kenneth Young ran into Dr Thomas Leung at the banquet and said to him, “It is good we are back discussing again. I don’t know where it will lead but at least we are now sitting together across the table”.¹ He mentioned something about being in discussion with Prof Luk about some kind of federation arrangement. Dr Leung was very, very surprised. He thought this whole issue about federation arrangement had been suspended between himself and Dr Edgar Cheng, and Prof Morris was fully aware of that. In any event, he had not been informed of the discussion² and could not recall any council resolution authorizing Prof Luk and the senior management team to negotiate a federal arrangement.³ It now transpires that it was Prof Luk who suggested that the Council Chairman not be informed.⁴
2. Prior to the Shaw banquet, Prof Luk had called Prof Young to say that they ought to re-start the discussion.⁵ Meetings were then held on 4, 13 and 20 October and 11 November. The HKIED team (Luk, Moore & Louisa Lam) considered such discussions as highly confidential, with Prof Luk suggesting those be treated as “conversations that never took place”.⁶ Prior to the meeting on 13 October, Prof Young sent to the HKIED team a table of issues.⁷ On the part of the HKIED, Prof Luk tabled a Discussion Paper (dated 20.10.06) in which it was proposed, inter alia, that the HKIED Council’s programme-related powers be allocated to the CUHK Council and Senate and its staff-related and estate-related power be allocated to a new HKIED Board of Trustees.⁸ On the time frame, it was proposed in the Discussion Paper that, at stage 1, HKIED Council would delegate its powers to the

¹ Young, Day 24/115:19-23 [1]. (The number appearing within [] throughout this Closing Submission refers to the quotation no. in the Companion Volume of Transcripts.)

² Leung, Day 26/107:1-13 [2].

³ Leung, Day 32/7:16-23 [3].

⁴ Louisa Lam, Supp §§5-6 [W2/27/89].

⁵ Young, Day 24/115:8-11 [4].

⁶ Louisa Lam, Supp, §6 [W2/27/89].

⁷ Ibid §4.

⁸ Prof Luk, Discussion Paper (20.10.06) [E3/9/180].

CUHK Council and HKIEd Academic Board. At stage 2, HKIEd's Council would be replaced by the Board of Trustees. At stage 3, both institutions would continue to submit separate Academic Development Plans to the UGC until around 2015, but would develop more and more collaborative and joint programmes. At the final, stage 4, "full federal integration" would take place, with CUHK's Council being the supreme governing body, the CUHK Senate and its Committee on Teacher Education continue to oversee all teacher education programmes within CUHK and the HKIEd President holding a concurrent position of Pro-Vice Chancellor of CUHK. CUHK's Faculty of Education and HKIEd would "become fully merged" and "all teacher education programmes become single-badged CUHK-HKIEd programmes".⁹

3. This end-point, if implemented, would have been an extremely tight federal arrangement, very close to a full merger, with the exception that HKIEd would maintain its own Board of Trustees and Academic Board to deal with estate and staff matter.¹⁰
4. According to Prof Louisa Lam, these discussions were pursued partially to alleviate the perceived pressure for merger on Prof Morris in order to ease the reappointment process.¹¹ Indeed, Prof Morris was fully aware of these discussions and had agreed to them taking place, as is reflected in his letter to Prof Luk and Prof Moore dated 9.10.06.
5. On 7.11.06, while these federation discussions were still going on, 18 academic members of the Academic Board (including Louisa Lam and Phil Moore, who took part in the said federation discussions) issued an email to all staff and students referring to their 11 October letter¹² which alleged, inter alia, that "as a result of external pressure the existing policy on deep collaboration is being changed to a forced merger on terms that we as the academic leaders of HKIEd would find less than favourable".¹³ The email also referred to "a rumour that the Institute will merge with CUHK in April 2007" and asserted, "in advance of the reappointment of the President, this policy matter

⁹ Ibid, sect G [E3/9/183].

¹⁰ Ibid.

¹¹ Louisa Lam, Supp §3 [W2/27/89].

¹² IE 3/267.

¹³ IE 3/314.

- should be clarified first”. According to Prof David Grossman, the sources of information for the allegations made in the 11 October letter were partly Dr Leung’s heart-to-heart talk with some of the staff after the Council meeting on 28.9.06, and partly from “informal discussions” with colleagues of CUHK.¹⁴
6. There was not a whisper about Luk, Moore and Lam’s own negotiations with the CUHK in the 7 November email to staff and students. In the light of such negotiations, and the fact that Profs Moore and Louisa Lam (who were two of the signatories of the email) saw fit to feed the merger rumour even though they had *first-hand knowledge* of the CUHK’s position through their negotiation meetings, the email was highly misleading. At the very least, if it was considered that the on-going talks with CUHK should be kept confidential, those in the know should refrain from fanning the flame of merger speculation while they took steps to withhold the most relevant information of *actual* negotiations going on at the same time.
 7. The merger rumour aroused a great deal of concerns among staff and students, particularly since there was a reference to a merger by April 2007. This was because close to 100 staff contracts were coming into the pipeline in 2007. The rumour caused considerable panic. The email not only failed to provide the staff and students with accurate or up-to-date information on the status of the merger/federation discussions, it fed the merger speculation by repeatedly linking it with Prof Morris’ reappointment.¹⁵ This necessitated the Council Chairman issuing repeated press releases to deal with these matters.¹⁶
 8. On 14.11.06 Prof Morris issued an email to all staff and students about his vision for the future of the Institute expressing, in particular, his support for a federal arrangement for the HKIED.¹⁷ This drew immediate and strong reactions from the students, who accused him of “selling out” the Institute in order to gain his own reappointment as President.¹⁸ Such outcry forced Prof Morris to hold an open forum on 16.11.06 for staff and students, at which he explained that his

¹⁴ Day 17/10:22-13:1; 127:14-20 [5].

¹⁵ Council Minutes (1.12.06) §14(15)(i)-(iv) [IE 2/51/119]. Grossman, Day 17/105:12-106:2 [6].
Leung, Supp §36(ii) [W1/28/248].

¹⁶ Press Release (6.11.06) [IE 3/309]; (9.11.06) [IE 3/322].

¹⁷ Ibid §10. Prof Morris, email (14.11.06) [IE 3/341].

¹⁸ Louisa Lam, Supp §10 [W2/27/90].

- preference was for the Institute to remain a completely autonomous institution but that his second choice would be for a federal arrangement.¹⁹
9. In his email to the staff and students of the same day (16.11.06), he asserted: “I do not propose a federation model in order to secure reappointment”.²⁰ This assertion is *untrue*, in the light of Prof Louisa Lam’s evidence that the federation discussions with CUHK in October/November 2006 were intended to ease Prof Morris’ reappointment process.²¹
 10. Those discussions stalled. On HKIED’s side, it is alleged that they decided not to continue the discussions because they did not accept the suggestion that the final endpoint would not include a Board of Trustees of the HKIED.²² On the part of CUHK, the talks were broken off for a very particular reason, namely, they felt “it would be improper for them to continue with any discussion with a management team that has a totally different agenda from its council”.²³
 11. This route of seeking reappointment (ie by putting forward a federation model in accordance with Prof Luk’s Discussion Paper) having failed, Prof Morris then alleged at the Council meeting on 1.12.06 *for the first time* (in the course of his presentation on reappointment) that “the Chairman made it clear to him that his further continuation as President would be dependent on his willingness to support a merger” and that this was said to him at the breakfast meeting with Dr Leung on 10.6.06, which was *half a year prior to the Council meeting*.²⁴
 12. At the subsequent Council meeting held on 25.1.07, the Council voted on the reappointment of Prof Morris. The motion was rejected by a vote of 10 to 3, with 3 other abstaining votes.²⁵

¹⁹ Ibid. See also Prof Morris, email (16.11.06) [IE 3/349].

²⁰ Ibid.

²¹ Louisa Lam, Supp §3 [W2/27/89].

²² Ibid §11 [W2/27/90].

²³ Young, Day 24/120:1-5 [7].

²⁴ Council Minutes (1.12.06) [IE 2/51/127]. This of course was denied by Dr Thomas Leung.

²⁵ Council Minutes (25.1.07) §5(170) [IE 2/53/305].

13. Following the non-renewal of Prof Morris presidency, the media reported that the HKIEd's senior management pointed their fingers at Prof Li.²⁶
14. In Prof Luk's 10,000-word letter, he ended by saying: "I know, Secretary. It is now time to pay".²⁷ Prof Luk explained these words in term of the non-reappointment of Prof Morris:-

Luk, Day 15/106:3-21

Q: Let me then ask you about what you meant in the last sentence of your so-called 10,000-word letter ... What did you mean by that?

A: The council chairman got rid of president Morris.

Q: What does it have to do with the telephone conversation which he had with you?

A: No direct connections.

Q: So it's a literary licence that you were using, was it?

A: Literary but not necessarily licence, no. Literary device to end the intra-net letter.

Q: Because the so-called getting rid of Prof Morris was the reason why you were writing this letter?

A: Yes.

Luk, Day 15/109:11-19.

Q: All I am asking, really is that whatever qualms you have about this decision, you are not saying that it has any connection with Prof Li's conversation with you?

²⁶ See eg Ming Pao (31.1.07) [EMB 11/11/58].

²⁷ Core 3/15-38.

A: In terms of individual council members' vote, no. What I'm contending is that Prof Li's telephone conversation with me about 'you will pay' was part of a broader pattern of Prof Li's relationship with the HKIED, most of which was focus on his desire for HKIED to merge into the Chinese University of Hong Kong, and that the council chairman would have acted on his behalf, particularly towards the end of 2005 and into 2006."

Luk, Day 15/110:18-24

"A: I don't think the explosive 'you will pay' as such had any direct connection with the other pressures, but I would consider this one-off incident of his exploding at [sic] me as part of the general pattern of his pressures on the HKIED, his looking down on HKIED and wanting the HKIED to merge into the Chinese University."

15. Prof Morris' position is similar. After referring to the Council's decision on 25.1.07 in his witness statement, Prof Morris says: "Dr Leung was, I believe, acting under the guidance of Professor Arthur Li".²⁸ Indeed, Dr Leung is alleged to be Prof Li's "agent".
16. When giving evidence, the Commission's Leading Council put to Prof Li this question: "Why would Prof Luk want to smear you?" The answer is plain. *Both* Prof Morris and Prof Luk regard Prof Li as being *responsible* for the Council's decision not to reappoint Prof Morris as President. As admitted by Prof Luk, the "getting rid of Prof Morris was the reason why [he was] writing" the 10,000-word letter.
17. The 10,000 word letter was first published in HKIED's intranet on 3.2.07.²⁹ Then, it was hyperlinked to Ming Pao's website, when it was disseminated to the public at large. Following this, Prof Luk got interviewed by the RTHK on 5.2.07.³⁰ He held his own press conference on 7.2.07.³¹ The Chief Executive in Council then decided to establish the present Commission of Inquiry with effect from 15.2.07.³² The matter also caught the attention of the legislators,

²⁸ Morris §77 [W1/12/114].

²⁹ Luk §7.12 [W1/13/148].

³⁰ EMB 11/10/49.

³¹ EMB 11/12/59.

³² GN(E) 5 of 2007 [Core/1/1].

resulting in the holding of a special meeting of the LegCo Panel on Education on 28.2.07.³³ At the end of his main speech before the Panel, Prof Luk said:-

“Finally, there is also an issue which has nothing to do with funding. The scope of inquiry of the Commission has not included failure of Prof Morris to obtain renewal of his appointment by HKIED’s Council; whether this because, as he said, he had refused a merger ...”³⁴

18. In short, Prof Luk was seeking, through political lobbying and public pressure, to reverse the decision of the Council. In so doing he targeted Prof Li and his personal agenda for *full* merger as the ultimate cause of all the troubles. There is, in our respectful submission, more than sufficient motive for the smearing of Prof Li.

Executive Summary

- (1) *Profs Luk, Moore and Louisa Lam decided to re-start negotiations for a very tight federal arrangement with the CUHK in October/November 2006, with the full knowledge and agreement of Prof Morris.*
- (2) *One of the purposes of such discussions was to ease the reappointment process for Prof Morris. Thus, although Prof Morris has repeatedly claimed that he did not propose a federation model in order to secure his own reappointment, this is untrue. The federation negotiations were re-started very much with this aim in mind.*
- (3) *So was the email by the 18 members of the Academic Board to the staff and students on 1.12.06. This email had the effect of fuelling the rumours, already rampant at the time, that the President’s reappointment was linked up with the issue of merger, causing widespread panic among the staff, particularly those whose contracts were up for renewal in 2007.*

³³ EMB 11/13/68.

³⁴ EMB 11/13/76.

- (4) *The senior management's strategy of pursuing federation model in order to secure Prof Morris' reappointment failed when the CUHK backed out and the students accused Prof Morris of "selling out", Prof Morris and Prof Luk accused Prof Li of undermining the President's reappointment prospects through merger pressure applied through Dr Thomas Leung, allegedly as Prof Li's "agent".*
- (5) *Such accusation did not alter the outcome of the Council's decision on 25.1.07, which was to reject the motion for Prof Morris' reappointment.*
- (6) *The above provides the background, and motive on the part of Prof Luk, in writing his 10,000-word letter in which, at the very tail end, he pointed the finger directly at Prof Li with the now famous words "I'll remember. You will pay!" This letter in turn has caused the present Inquiry to be established with effect from 15.2.07.*

CHAPTER 2

THE ALLEGATIONS – THE PROPER APPROACH

1. The three allegations are by now well-known.³⁵ The 10,000-word letter gave birth to them³⁶ but, since the constitution of this Inquiry, they have taken on a life of its own. While in its nascent state, the 2nd Allegation merely took the form of a general accusation of some senior Government official(s) calling up Prof Morris requesting for certain staff to be dismissed, this has concretized into very specific allegations when Particulars were given by Prof Luk (with the help of Prof Morris)³⁷ on 9.3.07³⁸ and 12.3.07³⁹ pursuant to the Commission's

³⁵ The three allegations are in the following terms:-

- (1) In January 2004, there was a telephone conversation between Prof Morris and Prof Arthur Li, the Secretary for Education and Manpower ("SEM") in which the latter attempted to persuade Prof Morris to take the initiative to propose a merger of the Institute with the CUHK. Prof Li indicated that otherwise he would allow the then Permanent Secretary for Education and Manpower ("PSEM") to have a free hand in cutting the number of students of the Institute ("the 1st Allegation").
- (2) In the past few years, whenever³⁵ some members of the Institute published articles in local newspapers which criticized the education reform or the education policy of the Government and its implementation,³⁵ shortly afterwards senior Government Official(s) repeatedly called to request Prof Morris to dismiss such members of the Institute ("the 2nd Allegation").
- (3) In late June 2004, in relation to a protest by a group of surplus teachers, Prof Li requested Prof Luk to issue a statement to condemn the teachers concerned and the Hong Kong Professional Teachers' Union ("PTU") that assisted those teachers, as such assistance would inhibit the employment of fresh graduates of the Institute. Upon Prof Luk's refusal, Prof Li said, "[So you won't issue the statement, huh? Alright.] I'll remember this. You will pay!" ("the 3rd Allegation").

³⁶ In paragraphs 16, 35 & 37 of the re-typed versions of the 10,000-word letter [Chinese version at Core/3/9, 14, 15 & English at Core/3/15-6, 15-14, 15-15].

³⁷ Prof Morris said he clarified some of the dates with Prof Luk and discussed the matter of the Particulars with him before the witness statement was finalized (which is dated 23.3.07): Day 6/30:24-31:7 [8]. Prof Morris was also involved in the giving of instructions which resulted in the giving of the Particulars: Day 10/51:8-25 [9]. Prof Luk, however, said: "For the particulars, I left it entirely to him [Prof Morris], because he was the primary source and I just heard about those events from him": Day 14/123:22-24 [10].

³⁸ On 9.3.07, Prof Luk gave the following particulars to the 2nd Allegation:-

directions given on 8.3.07.⁴⁰ The attention of the parties as well as the Commission have therefore been focused on the proving or disproving of those Particulars in the context of the 2nd Allegation.

2. However, from the three allegations have spawned numerous peripheral matters, many of which are not relevant to the Terms of Reference.⁴¹ Examples of these include the procedure for reviewing Prof Morris' reappointment, the university title, the Toronto conversation, etc. The fact that allegations relating to these issue were made does not mean that the Commission has to make specific findings on them. Indeed, such matters lie "*outside* the terms of reference of the Commission" under section 3(c) of the Commissions of Inquiry Ordinance (Chapter 86 of the Laws of Hong Kong) and are therefore beyond the jurisdiction of this Commission.
3. In approaching the relevant matters, the Commission will bear in mind the following principles:-
 - (1) This Inquiry is inquisitorial in nature. Although there is generally no onus of proof on any party, it is "always safe and proper to adopt the same civil evidence rule that he who alleges must prove".⁴²

-
- (1) The newspaper articles referred to in such Allegation were set out in the attached bundle of newspaper cuttings.
 - (2) Mrs Fanny Law was the Government Official.
 - (3) The occasions when she called Prof Morris to request the dismissal of the members of HKIED concerned took place on 30.10.02, late 2004, November 2004 and 21.4.05.
 - (4) The members requested to be dismissed were Mr Ip Kin-yuen, Prof Cheng Yin-cheong, Dr Lai Kwok-chan and Dr Wong Ping-man [Core/4/16-17].

³⁹ On 12.3.07, Prof Luk furnished further particulars of the 2nd Allegations by relating to the occasions of the alleged requests for dismissal with the members of HKIED as follows:-

- (1) 30.10.02 – Ip Kin-yuen and Dr Lai Kwok-chan.
- (2) Late 2004 (probably 19.11.04) – Dr Wong Ping-man.
- (3) November 2004 – Prof Cheng Yin-cheong.
- (4) 21.4.05 – Ip Kin-yuen and Prof Cheng Yin-cheong [Core/5/159].

⁴⁰ Core/6/162 §V(1).

⁴¹ Gazette Notice GN(E) 5 of 2007 [Core/1/1].

⁴² "Report of the Commission of Inquiry on the New Airport" (Jan 1999) §3.41.

- (2) Various standards of proof have been applied in inquiries in the past. In the “Report to the Council of the University of Hong Kong” dated 26.8.2000, the Independent Investigation Panel applied the standard of “proof beyond reasonable doubt”. The rationale was that, given the gravity of the matter at hand, the Panel “recognise that the evidential standard must be a high one”.⁴³ On the other hand, the Commission of Inquiry on the New Airport applied the “balance of probabilities” test in these terms:-

“The standard of proof adopted by the Commission is also generally on the balance of probabilities, but the more serious the nature of the allegation or criticism, the weightier the evidence there must be for the Commissioners to be satisfied. A finding on an issue must be supported by a standard of proof commensurate with the seriousness of the issue. Where it is stated in this report that the Commission reaches any finding or conclusion, the standard in support is that on the balance of probabilities. When the finding or view is based on more cogent evidence, the Commission will state the higher standard that has been reached, by using terms such as ‘beyond all reasonable doubt’, ‘sure’, ‘undoubtedly’, ‘doubtless’ or ‘absolutely’, etc.”⁴⁴

- (3) In the courts in Hong Kong, this is known as a “stricter standard of proof”. As explained in the recent decision by Ma CJHC in *Dr Wun Hin Ting v Medical Council of Hong Kong*:⁴⁵

“The words ‘stricter standard of proof’ involve a flexible concept. The only rule must be, as Litton VP said in the passage quoted above [in *Tse Lo Hong v A-G*],⁴⁶ the appropriate standard of proof should be commensurate with the gravity of the charge. This is not new law. The more serious the charge, *the more cogent the evidence must be to prove it*. The logic here is that the more

⁴³ “Report to the Council of the University of Hong Kong” (26.8.2000) §97.

⁴⁴ “Report of the Commission of Inquiry on the New Airport (Jan 99) §3.41.

⁴⁵ [2004] 2 HKC 367 §29(3).

⁴⁶ [1995] 3 HKC 428 at 440D-E.

serious the allegation, the less likely it is that the event occurred [italics added]”.

- (4) The need for “more cogent” evidence where the allegation is more serious is explained in detailed in the recent English Court of Appeal’s decision in *R (on the application of N) v Mental Health Review Tribunal (Northern Region)* as follows:-

“[62] Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its *application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the **stronger** must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in **the strength or quality of the evidence** that will in practice be required for an allegation to be proved on the balance of probabilities.

[63] The flexibility that exists in the application of the standard is clear from *Re H* itself, where Lord Nicholls, whilst affirming the existence of a single civil standard, stressed that it had ‘a generous degree of flexibility’ in respect of the seriousness of the allegation [emphases in bold added]”.⁴⁷

4. The allegations in the present Inquiry are *serious*. As in the *University of Hong Kong* Inquiry, the allegations here are pitched at the level of alleged interference with the academic freedom of an institution of higher education and its staff. Moreover, they are also characterized as incidents of alleged interference with institutional autonomy. The way Prof Morris puts his case is that:-

⁴⁷ *R (on the application of N) v Mental Health Review Tribunal (Northern Region)* [2006] 4 All ER 194 at 218-219, §§62-63 (per Richards LJ).

“Subsequently [to the phone call, the subject of the 1st Allegation], the HKIED suffered a number of severe cuts to student numbers and resourcing, which resulted in a major argument between the Institute and senior officials from the EMB in LegCo in January 2005 ... A number of other decisions concerning the HKIED demonstrate that every opportunity has been taken to implement the threats to ‘punish’ or ‘rape’ the HKIED. The details concerning these have been accurately documented in Professor Luk’s testimony to the Legco Panel of Education on 28 February 2006”.⁴⁸

He also alleges that EMB has used “UGC as the messenger to implement decisions to ‘rape’ and ‘punish’ the HKIED”.⁴⁹

5. In putting his case to Prof Li, Mr Martin Lee SC persisted in this line of allegation by stating:-

“... failing to win Prof Morris over, you then used the stick instead of the carrot by telling Prof Morris in that telephone conversation – this is the first allegation – that if he would not merge then you would allow Mrs Fanny Law effectively to cut funding to the HKIED”.⁵⁰

Mr Lee further added:-

“Again, when you failed to use the stick, you then tried to use your influence on Dr Thomas Leung, the council chairman, to bring about the merger, including the threat that if Prof Morris was not to initiate the merger then he would not be re-appointed as president?”.⁵¹

According to Prof Morris, Dr Thomas Leung was “acting as an agent for Professor Arthur Li”.⁵²

⁴⁸ Morris §37 [W1/12/95].

⁴⁹ Morris §81 [W1/12/116].

⁵⁰ Day 37/23:24-25:4 [11].

⁵¹ Day 37/26:4-8 [12].

⁵² Morris §62 [W1/12/105].

6. According to Prof Luk, the alleged conversations between Prof Morris and Mrs Law concerning the dismissal of HKIEd staff were incidents where Prof Morris “became engaged in an argument with Mrs Law about academic freedom and institutional autonomy”.⁵³
7. Indeed, paragraph (b) of the Terms of Reference makes it abundantly clear what really is issue in this Inquiry, namely, whether “there has been any improper interference by SEM or other Government Officials with the academic freedom or the institutional autonomy of the Institute”.⁵⁴
8. Because of the serious nature of the allegations made, and the fact that a finding under paragraph (b) of the Terms of Reference of “improper interference” depends on the findings of fact in respect of the three allegations, it is (in our respectful submission) incumbent upon the Commission to *only* find these allegations proved if the **evidence is so strong, and its quality so good**, that the Commission is satisfied that the **serious conduct** alleged against Prof Li and Mrs Law have indeed occurred by reference to what Ma CJHC described as the “stricter standard of proof”.

Executive Summary

- (1) *The allegations against Prof Li and Mrs Law are serious, and the main issue in the Inquiry, namely, whether there has been improper interference with the academic freedom or the institutional autonomy of the HKIEd, is likewise serious and important.*
- (2) *This calls for the application of what Ma CJHC called a “stricter standard of proof” for facts going to the establishment of the three allegations.*
- (3) *This is a flexible concept, the rule being that the standard must be commensurate with the gravity of the charge.*

⁵³ Luk §6.19 [W1/13/141].

⁵⁴ Core/1/1.

- (4) *The Commission should only find the three allegations proved if the **evidence is so strong**, and its **quality so good**, that the Commission is satisfied that the **serious conduct** alleged against Prof Li and Mrs Law have indeed occurred by reference to the **stricter** standard of proof.*

CHAPTER 3

1ST ALLEGATION – 21 JANUARY 2004

1. If one traces the life history of the 1st Allegation, tracking its various mutations in time, it unwinds itself and dissolves into a “non-allegation”.

The 10,000 Word Letter (5.2.07)

2. In the 10,000 word letter, Prof Luk stated (in relation to the 1st Allegation):-

“Li tried to persuade Morris to take the initiative to propose to the CUHK a merger with it; otherwise, Li would allow Mrs Law, Permanent Secretary, to have a free hand in cutting the number of students of the HKIED”.⁵⁵

Presentation to LegCo Panel on Education (28.2.07)

3. In Prof Luk’s presentation to the LegCo Panel, he wrote:-

“At about the same time, Professor Morris received the first phone call I mentioned in my Intranet message from SEM Arthur Li asserting that HKIED needed to do something ‘radical’ if it was to be saved from the severe cuts which were about to be inflicted on it in the forthcoming triennium planning exercise”.⁵⁶

4. The references to “merger” and Mrs Law having a “free hand in cutting the number of students” were dropped.

⁵⁵ Core/3/15-6 §16. Chinese version at Core/3/9 §16.

⁵⁶ MLA 1/11/142.

Witness Statements

5. What Prof Morris said in his witness statement was something very different. It was alleged that Prof Li said, inter alia:-

“(a) he had seen the UGC ‘Start Letter’ which was going to be sent by UGC to me and it was very, very bad news, the bad news being that there would be a reduction in the overall student numbers for the HKIEd.

(b) he was my only friend in the EMB and HKIEd had no friends (except him) because it was very critical of the Government, Mrs Fanny Law wanted the Institute squeezed and this would happen if HKIEd did not do something “radical”.

(c) EMB had extra resources for a merger with CUHK. HKIEd should become part of CUHK and I should initiate it.

(d) The Faculty of Education at CUHK was very weak and CUHK would be happy to ditch them. They had no leadership, and I should lead it and be in charge. He mentioned Chung Chi College as a model”.⁵⁷

6. In Prof Luk’s witness statement, he married the (b) and (c) above when he stated:-

“He went on to say that he could save the HKIEd from the impending cuts by Mrs Fanny Law if Professor Morris would do something radical, namely taking the initiative to make the HKIEd a part of CUHK”.⁵⁸

Prof Morris’ Evidence-in-chief

7. In his evidence-in-chief, Prof Morris said:-

“The gist of the conversation was that the Start letter was very bad news for the Institute; the Institute had no friends except

⁵⁷ Morris §24 [W1/12/89].

⁵⁸ Luk §5.11 [W1/13/123].

him; that there was a very strong ‘anti’ feeling towards the IEd; and that really he said he wanted to – portrayed himself as wanting to help and suggested that the only way to address this significant problem that was going to come with the Start letter, because of a decline in student numbers, was for the IEd to merge with Chinese U; and he repeated his idea of creating an Institute or an entity within Chinese U which would be the centre for teacher education in Hong Kong, and he envisaged me leading that ...

In the phone call he explained it that the IEd had no friends. He was my only friend and the only way he could help me was if I was willing to merge the IEd with Chinese U. He also portrayed the situation as one that he wasn’t leading but it was other people in EMB who were responsible for ...

By implication it was Mrs Law ...

In this conversation, the one I had on 26th June, Prof Li expressed a very low opinion of the Faculty of Education at Chinese U; said they had no leadership; the university sort of didn’t view them as one of their strongest faculties, and he believed that I could play a leadership role”.⁵⁹

8. Prof Morris then concluded this episode with his own interpretation:-

“My understanding was that the Institute would be made unviable unless I agree to merge it ...

Then I think the situation would have been far more positive ...

The cutbacks in the student numbers would have been, I believe, less, and every opportunity – all the things that have been denied the IEd might have been treated more positively. There are many examples of ways in which the IEd has been disadvantaged over the last five years”.⁶⁰

⁵⁹ Day 5/66:12-69:11 [13].

⁶⁰ Day 5/70:12-71:3 [14].

9. This evidence marked a significant shift from both Prof Luk's version and Prof Morris' own witness statement:-
- (1) It referred to the "decline in student numbers" as a *fact* as something to be reflected in the Start Letter, *not* something that would happen *if* Prof Morris did not take the initiative to propose a CUHK merger. The calculated use of the word "otherwise" in the 10,000 word letter was simply an embellishment on the part of Prof Luk which is wholly unjustified, and highly defamatory.
 - (2) The so-called "anti" HKIED feeling, again, was no longer linked to Mrs Law wanting the Institute "squeezed" as alleged in Prof Morris' witness statement.
 - (3) In short, two *mutations* occurred:-
 - (a) Failure to initiate merger was no longer a *cause* of cuts in student numbers – the 1st *de-linking*; and
 - (b) The "anti" HKIED feeling was no longer a *cause* of the 'squeezing' of the Institute (whatever that means) – the 2nd *de-linking*.
 - (4) What was now alleged is that Prof Li offered to *help* as a friend if Prof Morris was willing to merge with CUHK. However, the reference to doing something "radical" was dropped altogether, being substituted by nothing less than a "merger".
 - (5) Perhaps most significantly, Prof Morris conceded that Mrs Law was *not* expressly mentioned. It was his own interpretation that Prof Li's reference to "other people in EMB being responsible for" the "situation" (whatever that means) was a reference to Mrs Law "by implication".
10. In assessing Prof Morris' evidence, the Commission will bear in mind the principle that, in approaching serious allegations of this nature, the consideration of the **strength** and **quality** of the evidence is paramount in determining whether the requisite standard of proof is satisfied.

11. The **weakness** and **poor quality** of the evidence as shown above, particularly in the light of the mutations occurring within such a short span of time, can hardly give this Commission the confidence that anything remotely close to the 1st Allegation has been established.

Cross-examination of Prof Morris

12. Prof Morris' evidence-in-chief continued to shift under cross-examination:-

“Q: The point I am making is that he [Prof Li] has uttered no threat to you to the effect that you had to do something like merging with the Chinese U in order to save yourself from the cuts; that was never mentioned and it was not mentioned in your evidence-in-chief.

A: The phone call I received, the very clear message was there was very bad news coming for the Institute. The only way he could help me was if we merged. At that point I did not have the letter ...

Q: What I am trying to say is that Prof Li did not say to you – he didn't say this – that if you don't merge with Chinese U, then you would have your numbers cut; he didn't say that, right?

A: No. What he said is that, 'What's coming to you in the Start letter is very bad news. I want to try and help you. I'm your best friend. If you want to be viable then the only way to do it is merge.

Q: I see. So he used the word 'viable', did he?

A: Well, viable – the word – I can't remember specifically. It was a question, 'If you want to stay afloat' basically was the sentiment.

Q: Stay afloat?

A: Yes.

Q: In other words, what he was saying – or I will paraphrase what you are saying – 'If you want to cope with the cuts, I could help you if

there was going to be a merger’; would that be a better way to express this?

A: The way I said it earlier is the way I’d stick to”.⁶¹

13. Shortly after this exchange, the Chairman summarized as follows: “I think his evidence is quite clear on this point. In fact at one time Prof Morris was actually saying that he can’t be sure if Prof Li ever mentioned the name, but by implication that’s what he got”.⁶²
14. When cross-examined by Mr Yu SC, Prof Morris attempted to salvage the 1st Allegation by introducing for the first time what he called “the second element” in the conversation:-

“Q: At least one interpretation of this [referring to Prof Morris’ evidence in cross-examination on Day 8] is that what is happening is going to happen; for example, if the Government has a deficit, it has to have a budget cut, it has to happen. And if that is something to happen, in order to survive through the difficulty, one way is to merge. Wasn’t that the interpretation that you were trying to – that you were giving?

A: Yes. I think the message was, ‘There’s very bad news coming, the IEd is not flavour of the month. If you want me to help, the way I can do is if you agree to merge.’

Q: Now, Prof Luk’s version is a different version, which is that whether it is going to be cut depends on whether you are going to agree to a merger.

A: Then there’s a difference.

Q: There is a difference?

A: There is.

⁶¹ Day 8/144:13-146:5 [15].

⁶² Day 8/147:3-6 [16].

Q: But your evidence, in your evidence in cross-examination, is plainly towards the former and not the latter?

A: Yes.

Q: Do you agree that?

A: Yes.

Q: So if you were to have the chance to read Prof Luk's letter before it was published, would that have been something you would wish to modify?

A: Yes. I think there's a number of areas in which I'd have advised Prof Luk to modify this, if I'd seen it beforehand."⁶³

15. Shortly after this exchange, Prof Morris then launched into his theory about the "second element":-

"Q: What Prof Luk is putting here [in the 10,000 word letter] is a different interpretation. The difference is that the cutting of the student numbers is not a given situation but a changing, variable situation depending on whether you are going to agree to merge. Is that not what Prof Luk is portraying here?

A: Yes, but I think he's catching the second part of the discussion.

Q: What is the second part of the discussion?

A: The first part of the discussion relates to the Start letter and declining student numbers that are coming, the need to do something radical. That was your first interpretation. Okay?

The second element is that IEd was not popular within the EMB and there was a desire to cut it, and he was basically saying essentially, 'If you want to protect the Institute from that, then I can help you through a merger.'

⁶³ Day 10/116:14-117:24 [17].

Q: This second part, do we find it in your evidence in the cross-examination?

A: I don't remember. Are you talking about the transcript?

Q: Yes. We were looking at it on Day 8, page 144.

A: Okay. Well –

Q: No, it doesn't seem to be here".⁶⁴

16. Then, after referring to his evidence-in-chief:-

“Q: In your evidence-in-chief you didn't spell out that there were two parts. You lumped them all into one?

A: I think when I say 'the Start letter was very bad news for the Institute; the Institute had no friends except him; that there was a very strong 'anti' feeling towards the IEd' – I think there are two separate elements there. There is the 'anti' feeling towards the IEd and the Start letter which contains very bad news.

Q: In either your evidence-in-chief or in cross-examination, did you actually say or is it Prof Li's message to you that the student numbers could be varied depending on whether you agree to merge or not?

A: It wasn't put that way. It was put that the only way he could help the IEd was if we agreed to merge. So it wasn't an explicit saying, 'I'll increase the numbers.'

Q: If that's the case, what you are saying is that he is not explicitly saying, 'If you don't agree to merge I will get Mrs Law to cut your numbers even more'; he's not saying that?

A: I think the way I read it was if you want this process of cuts to stop, to be reversed, then you need to agree to merge.

⁶⁴ Day 10/119:11-120:10 [18].

Q: That would be an interpretation?

A: That would be an interpretation, yes.

Q: Rather than what he said?

A: Well, I think he said – what I said was ‘this significant problem ... because of a decline in student numbers ... was for the IEd to merge with Chinese U’, et cetera. So he’s telling me, ‘If you don’t want this to happen, then the way to do it is to agree to merge.’

Q: Don’t want what to happen?

A: The significant problem that’s going to come from (a) the Start letter and (b) the IEd having no friends and a desire to cut the student numbers.

Q: So he did not explicitly link the numbers with the merger?

A: The numbers in the Start letter, no. He just painted a general picture of a very bad situation.

Q: So, Professor, again trying to be as fair-minded as possible, is it not a matter of interpretation and is it possible that all that Prof Li was saying was, ‘The numbers are bad’, the way he looked at it, and in order to survive you would have to think of something like merger; is that a possible interpretation of the conversation that he had with you?

A: It’s one part of it.

Q: It’s one part of it, but overall, is that a possible interpretation?

A: When I put this in the context of the other discussions, interactions that I’ve had with Prof Li.

Q: Ah. I think we have to look at this conversation on its own, because if you are injecting a lot of hindsight with thing –

Chairman: Mr Yu, I think this witness has already told us many times what in fact was the conversation. How one makes out of it or

interprets it or misinterprets it is a matter for the individual. He has certainly given his interpretations. I don't think we need to further dwell on this aspect.

Mr Yu: Thank you.”⁶⁵

17. It is indeed necessary to separate from Prof Morris' evidence what are *facts* and what are his *interpretations*. Mr Yu SC is perfectly correct in pointing out that one must not, as Prof Morris apparently did, try to interpret this conversation by injecting other interactions in hindsight.
18. Stripped of his theories, hindsight and interpretations, Prof Morris was really saying that the 1st Allegation in the way it was framed by Prof Luk in the 10,000 word letter was simply *not* what he (Prof Morris) heard in his telephone conversation. What he heard was that the decline in student numbers was going to come in any event and that, in order to survive or cope with the difficulties, Prof Morris had to do something “radical”, including the consideration of a merger.
19. To the extent that he also mentioned references to negative feelings in the EMB, this was *not* linked to the cutting of student numbers at all. Nor was it said that there would be further “squeezing” if merger was not pursued. The 1st and 2nd *de-linking* in the evidence-in-chief already established these points. The cross-examination simply put the matter in perspective so we could understand exactly what Prof Morris was saying that he heard from Prof Li.

Evidence of Prof Li

20. Prof Li's evidence is simple and straight-forward. There was none of the struggled interpretations on the part of Prof Morris trying to spin out something negative in support of Prof Luk's 1st Allegation:-

“All I remember was there was no one part or two parts in the conversation. Basically, I was telling him what he already knew and I continued to paint a gloomy picture of our economic outlook and that means that not only 2004-05 is going to be bad, 2005-08 is also going to be bad and for him, he

⁶⁵ Day 10/121:2-123:12 [19].

should as a leader of his institution, who particularly is going to be affected, and as I am his friend and I do care a great deal about IEd, because they produce our teachers, as I said, I hope that he would think of something more radical, so as to make sure that they can get over these difficulties. And since UGC has \$200 million sitting there for restructuring and collaboration, this is something he should consider, but that was the extent of our telephone conversation.

There was no question of student numbers or Start letters or EMB or unpopularity. There was none of that.”⁶⁶

21. Whatever that was negative coming out from that conversation, it was because of the funding cuts which were going to come in any event. Even according to Prof Morris’ version, this was not the making of Mrs Law. Moreover, he did not argue that “there’s not a logic or rationale behind each of these cuts”.⁶⁷

Circumstances Leading to the Conversation

22. The circumstances leading up to that conversation put it beyond doubt that, when Prof Li made that call on 21.1.04, threatening the HKIEd was the last thing that could have been on his mind. These circumstances will be briefly listed below; some of them will be referred to again under our discussion on the merger issue:-

- (1) Following Prof Li’s visit to the HKIEd to make his presentation on the merger issue on 28.11.02, the EMB was informed that “HKIEd is going to set up the subject Task Force to review and make recommendations on issues which include ‘exploring the form and benefits (if any) of integrating and/or collaborating with other institutions’”. In this connection, EMB received a document from HKIEd called “Terms of Reference and Membership Composition of the Task Force on the Future Development of the HKIEd”.⁶⁸
- (2) On 28.2.03, Prof Morris sent a letter to Dr Alice Lam, Chairman of UGC, copying it to Prof Li, expressly referring to

⁶⁶ Day 33/177:16-178:7 [20].

⁶⁷ Day 11/153:8-154:2 [21].

⁶⁸ EMB 5(1)/8/149-151.

“further consideration of the questions related to collaboration and integration”, recommending that “UGC facilitates such a discussion and invites all interested tertiary institutions to explore the potential possibilities with regard to collaboration and integration”.⁶⁹ In reply, Dr Lam wrote: “I congratulate the HKIEd for taking this initiative and would encourage you to be brave. If there is anything you think UGC can help at this stage, please do not hesitate to approach me”.⁷⁰ In the mind of Prof Li and the EMB, the letter of 28.2.03 represented “Paul’s [Prof Morris’] idea forward on institutional collaboration and integration in the UGC”, as is evidenced by the draft letter to Dr Lam dated 6.3.03.⁷¹ Prof Li said in evidence that he did take that idea “to be Prof Morris’ idea”. Prof Li’s thinking was this:-

“In 2003, I thought he was open-minded, he was considering it and he was quite keen to pursue it and I think he realized the benefit of a merger and I think he was trying to do the best for his institution and following along those lines that he was taking”.⁷²

Prof Li got “the idea or the sense that he was very keen to pursue the matter”.⁷³ In other words, in Prof Li’s mind, Prof Morris was **already taking the initiative to pursue a merger or institutional integration**. There would be absolutely no need to issue the threat as suggested in Prof Luk’s 1st Allegation.

- (3) Prof Li himself urged the UGC (by letter to Alice Lam dated 4.4.03) to “undertake more detailed examination of the potential benefits, financial and staffing implications, and possible approaches to the proposed integration [between HKUST and CUHK], to discuss with the institutions concerned, and to make recommendations on the way forward”.⁷⁴ This eventually led to

⁶⁹ EMB 5(1)/9/152.
⁷⁰ EMB 5(1)/10/153.
⁷¹ EMB 5(1)/11/154-155.
⁷² Day 33/91:10-92:2 [22].
⁷³ Day 33/92:3-5 [23].
⁷⁴ EMB 5(2)/492.

the setting up of the Niland Working Party on Institutional Integration, as confirmed by Alice Lam's reply dated 25.8.03.⁷⁵

- (4) In EMB's Brief for CE's meeting with the UGC on 19.8.03, EMB's understanding of HKIEd's position on merger was expressly recorded. This stated:-

“Meanwhile, we note HKIEd's wish to explore further collaboration with other institutions in the delivery of teacher education programmes, and **possible merger with CUHK**. We will actively pursue these initiatives.”⁷⁶

The Brief further stated:-

“The Administration supports proposals from the institutions of complementary strengths to merge, in order to enhance the quality of teaching and research, increase students' choices, build up a critical mass in areas of excellence, and create institutions capable of competing at the highest international levels.

The Government supports the possible integration of CUHK and HKUST but fully respects the academic freedom and institutional autonomy of universities.”⁷⁷

In his evidence, Prof Li confirmed that the above was “an accurate statement of the Administration's position on merger and collaboration at that time, and that this did not entail any forcing of any institution.”⁷⁸ This is consistent with Prof Li's own view on merger, as reflected in a statement he made during an informal visit to HKUST in February 2003, where he said: “Any merger will be based on an effective model of integration that will *respect the unique cultures of HKUST and CUHK*”.⁷⁹

⁷⁵ EMB 4(2)/500.

⁷⁶ EMB 5(1)/11A/155-2.

⁷⁷ EMB 5(1)/11A/155-2-155-3.

⁷⁸ Day 33/92:6-93:9 [24].

⁷⁹ EMB 14/1295.

- (5) Prof Li obtained a further understanding of HKIEd’s position during the lunch meeting with Dr Thomas Leung and Alfred Chan on 14.10.03. Mrs Law was also present and subsequently wrote an internal email recording what transpired at the lunch.⁸⁰ According to the email, Dr Leung said that “HKIEd would like to have an early indication of the plan to merge HKIEd with CUHK – how this was to be done and what would be the division of responsibility between the future Institute of Education within CUHK and the existing Education Faculty of CUHK. Dr Leung has spoken to Professor Nidland, the Chairman of UGC’s Committee on the integration of institutions and hoped to have a clearer idea of the way forward after the UGC meeting in January 2004”. Prof Li’s evidence on this was:-

“I think Dr Leung wanted basically to find out if EMB had a position or had preconceived ideas of this merger question and wanted to ask us whether we have any plans and if so, what are our plans, how do we see the landscape? But we didn’t have any plans and we didn’t have any landscape. But my impression was that they were keen to explore further collaborations or integrations.”⁸¹

This sense of “keenness” is often consistent with, and reflected in:-

- (a) what transpired at the earlier lunch meeting between Alice Lam/Michael Stone and Prof Morris/Dr Leung on 1.9.04 (where, in Mr Stone’s note, Prof Morris and Dr Leung were described as “keen on looking at the idea of merger”);⁸² and
- (b) Prof Morris’ letter to Dr Alice Lam dated 17.9.03 where he invited the UGC to consider “extending the remit of the Niland Working Party to advise on the longer term position of the HKIEd and [they] would be very willing

⁸⁰ EMB 5(1)/162.

⁸¹ Day 33/132:15-22 [25].

⁸² E2/31/145.

to discuss at an appropriate stage how this process might be facilitated”.⁸³

- (6) At the UGC meeting on 9.1.04, Dr Alice Lam referred to the setting up of the Restructuring and Collaboration Fund with an initial amount of about \$200 million, to be increased eventually to \$400 million annually.⁸⁴ This was the Fund which Prof Li referred to in his evidence concerning what he told Prof Morris in the phone call on 21.1.04.⁸⁵
- (7) By letter to Prof Li dated 16.1.04, the UGC enclosed an advance copy of the UGC’s Policy Blueprint on the Position of the Higher Education Sector in Hong Kong which the UGC planned to make public on 30.1.04. The enclosed document set out the UGC thinking on the matter and how it intended to pursue it in practical terms to reach results.⁸⁶ In the Policy Blueprint, the UGC referred to “strategic alliances” which it wished to see among the eight UGC-funded institutions. It was stated:-

“25. These alliances should go well beyond one-off cooperation at a programme level but rather be long-term deep collaboration between institutions (in terms of matters such as credit transfers, taking of courses in other institutions, joint award of degrees, setting up joint research centres, library sharing, back-office sharing etc) or indeed even more robust integration between institutions. The UGC sees no reason such strategic alliances should not range beyond deep collaboration through to full merger as circumstances and timing warrant”.⁸⁷

Against this background, Prof Li explained his use of the word “radical” in his telephone conversation with Prof Morris on 21.1.04:-

⁸³ IE 24/83.

⁸⁴ See UGC minutes (9.1.04) [EMB 5(1)/14A/167-2 to 167-3].

⁸⁵ See §20 above.

⁸⁶ EMB 5(1)/15/168.

⁸⁷ EMB 5(1)/15/179 §25.

“Q: Of course, it was only shortly before that telephone conversation that you received this document, you had the UGC meeting discussing all these things. What would you have meant or what did you mean if you had used the word ‘radical’ or some such word?”

A: I really would mean that they should think out of the box rather than just carrying on doing what they are doing and really take the institution to a different level, by deep collaboration, by collaboration, joint programme, joint degrees, that sort of thing that they should consider.

Q: Would it reflect, for example, the various ideas that you see in paragraph 25 of the document⁸⁸ that we have just read?

A: It would, it would.

Q: For example, after referring to a number of examples of deep collaboration, it also says: ‘the UGC sees no reason such strategic alliances should not range beyond deep collaboration through to full merger as circumstances and timing warrant.’ Would that be the sort of idea?

A: This would be the sort of idea.”⁸⁹

Prof Li completed his comments on the UGC Policy Blueprint and his use of the word “radical” by saying: “That’s the blueprint. ‘Come up with something. Do something radical. Think about it.’ I think that was the purpose of my telephone conversation with Prof Morris”.⁹⁰

- (8) Finally, in the now well rehearsed letter from Dr Alice Lam dated 14.1.04 characterized by the phrase “Rob Peter to Pay Paul”, Prof Li’s attitude to HKIED really shone through his handwritten words endorsed on this letter:-

⁸⁸ Ibid.

⁸⁹ Day 33/165:3-166:6 [26].

⁹⁰ Day 33/167:11-14 [27].

“Since UGC knows our intention, ask them for a proposal back. WE need to rob Peter & pay Paul but NOT TOO MUCH!”⁹¹

23. All of the events listed above reflected, as well as contributed to the shaping of, Prof Li’s state of mind when he called up Prof Morris on 21.3.04. This mentality is best summarized in the following evidence given by Prof Li himself:-

“Q: One final question. Knowing all the things that you knew, in 2003, about HKIEd’s position on merger and what you said about Paul Morris being very keen on integration discussion, his efforts to get UGC involved, to lead the discussion, and also from this lunch with Dr Thomas Leung, as to his indication on behalf of HKIEd [on] the position on merger, was there any question of you having to force or threaten Prof Morris or HKIEd into a position of having to continue or to start pursuing merger or things like that?

A: None at all. None at all whatsoever.

Q: Would there have been any reason for you to make such statement as to give them the feeling that you are pressurizing them on the merger path?

A: Not at all. If they had come back like other institutions and said, ‘I’m not interested’, that would have been the end of the matter, but they have not, they have come back and say, ‘We want to look into this. We want to explore this. We want to carry on with this.’

Q: Have you done anything with the other institutions who have come back to you and say, ‘We are not interested. We are interested only in small is beautiful’ or some other thing? Did you ask them to do anything after you received that response from them?

A: Not at all, because each institution is responsible for their own strategic direction and if they decided to go it alone, then good, then they would plan it alone. It’s not up to me to interfere with them and say, ‘You will not be big and not beautiful.’

⁹¹ EMB 3/62/239.

Q: If they did come to you and asked you to do certain things, what would have been your attitude?

A: What do you mean?

Q: If they had come to you, as I say, like the UST and CUHK, ‘I want you to do something’ –

A: In that case, I would certainly do my best to facilitate them, to help them, and look at what things from a Government point of view we could do to help them”.⁹²

24. The above constitute cogent evidence that Prof Li had no reason to, nor any intention, to threaten HKIEd with cuts if merger was not pursued. The evidence of Prof Morris before this Commission shows further that no threat was uttered by Prof Li.

No Mention of Chung Chi Model

25. In Prof Luk’s evidence, he alleged that Prof Li also mentioned the Chung Chi model with Prof Morris in the telephone conversation.⁹³
26. He even went as far as to say that he discussed with Prof Morris on that occasion as to the time-frame against which the so-called “Chung Chi model” was allegedly referred to by Prof Li. He testified:-

“I probably have questioned Prof Morris on this point, ‘Did Prof Li say Chung Chi model back in the old days or did he refer to the Chung Chi model nowadays?’ and I think Prof Morris’s response was, ‘He didn’t give any timeframe.’ Right? So presumably he meant the Chung Chi model as it existed at the time”.

He then suggested that “in the case of Chung Chi College, it was a forced merger”, a “hostile takeover”.⁹⁴

⁹² Day 33/134:17-136:3 [28].

⁹³ Day 12/132:16-18 [29].

⁹⁴ Day 12/135:9-136:3 [30].

27. Prof Luk’s evidence is suspect, as shown by the following exchange in Prof Morris’ testimony:-

“Q: At the telephone conversation in 2004 he did not mention the Chung Chi model, did he?”

A: In many conversations with me, Prof Li mentioned the Chung Chi model. When I would argue for a federal he would say, ‘Well, we could have something like what Chung Chi is now.’

Q: I’m talking about January 2004. In that telephone conversation he did not refer to the Chung Chi model, did he?”

A: I don’t think he did. The 21st January conversation was about the Start letter.”⁹⁵

28. Prof Luk’s motive in framing the 1st Allegation in the way he did is plain. He used it to show that the phone call of 21.1.04 was the starting point of *improper* pressure being exerted by Prof Li on Prof Morris to pursue a *full* merger. In §16 of the 10,000 word letter, he referred to this as his first encounter of the “pressure for a merger”, and that the phone call “astonished both Morris and [him]”.⁹⁶

29. As we now see from the evidence of Prof Morris and Prof Li, such insinuation of improper pressure for merger arising from that phone call is wholly *unfounded*. In circumstances already set out Chapter 1, Prof Luk used, and has continued to use, his various Allegations to target Prof Li as someone who is to blame for Prof Morris’ loss of the bid for reappointment and the other complaints set out in his 10,000 word letter.

Executive Summary

- (1) *If one traces the life history of the 1st Allegation, tracking its various mutations in time, it unwinds itself and dissolves into a “non-allegation”.*

⁹⁵ Day 9/25:11-21 [31].

⁹⁶ Core/1/15-6.

- (2) *Prof Morris' evidence-in-chief marked a significant shift from both Prof Luk's version in the form of the 1st Allegation and Prof Morris' own witness statement on this issue:-*
- (a) *It referred to the “decline in student numbers” as a fact as something to be reflected in the Start Letter, not something that would happen if Prof Morris did not take the initiative to propose a CUHK merger. The calculated use of the word “otherwise” in the 10,000 word letter was simply an embellishment on the part of Prof Luk which is wholly unjustified, and highly defamatory.*
 - (b) *The so-called “anti” HKIEd feeling was no longer linked to Mrs Law wanting the Institute “squeezed” as alleged in Prof Morris' witness statement.*
 - (c) *In short, two mutations occurred:-*
 - (i) *Failure to initiate merger was no longer a cause of cuts in student numbers – the 1st de-linking; and*
 - (ii) *The “anti” HKIEd feeling was no longer a cause of the ‘squeezing’ of the Institute (whatever that means) – the 2nd de-linking.*
 - (d) *What was now alleged is that Prof Li offered to help as a friend if Prof Morris was willing to merge with CUHK. However, the reference to doing something “radical” was dropped altogether, being substituted by nothing less than a “merger”.*
 - (e) *Perhaps most significantly, Prof Morris conceded that Mrs Law was not expressly mentioned. It was his own interpretation that Prof Li's reference to “other people in EMB being responsible for” the “situation” (whatever that means) was a reference to Mrs Law only “by implication”.*

- (3) *In assessing Prof Morris' evidence, the Commission will bear in mind the principle that, in approaching serious allegations of this nature, the consideration of the **strength** and **quality** of the evidence is paramount in determining whether the requisite standard of proof is satisfied.*
- (4) *The **weakness** and **poor quality** of the evidence-in-chief adduced in connection with the 1st Allegation, particularly in the light of the mutations occurring within such a short span of time, can hardly give this Commission the confidence that anything remotely close to the 1st Allegation has been established.*
- (5) *Prof Morris' evidence-in-chief continued to shift under cross-examination, when he testified that Prof Li said to him: "What's coming to you in the Start letter is very bad news. I want to try and help you. I'm your best friend. If you want to be viable then the only way to do it is merge".*
- (6) *Stripped of his theories, hindsight and interpretations, Prof Morris was really saying that the 1st Allegation in the way it was framed by Prof Luk in the 10,000 word letter was simply not what he (Prof Morris) heard in his telephone conversation. What he heard was that the decline in student numbers was going to come in any event and that, in order to survive or cope with the difficulties, Prof Morris had to do something "radical", including the consideration of a merger.*
- (7) *This is consistent with Prof Li's evidence on the phone call.*
- (8) *The circumstances leading up to that conversation put it beyond doubt that, when Prof Li made that call on 21.1.04, threatening the HKIEd was the last thing that could have been on his mind.*
- (9) *Prof Luk's motive in framing the 1st Allegation in the way he did is plain. He used it to show that the phone call of 21.1.04 was the starting point of improper pressure being exerted by Prof Li on Prof Morris to pursue a full merger. Ultimately, his aim was to deploy his various Allegations (including the 1st Allegation) to target Prof Li as someone who is to blame for*

Prof Morris' loss of the bid for reappointment and the other complaints set out in his 10,000 word letter.

CHAPTER 4

THE 2ND ALLEGATION – 30 OCTOBER 2002

1. This episode is of particular importance since, as admitted by Prof Morris, this was the only occasion when he said the word “fire” or “dismiss” was allegedly used. According to him, “in subsequent conversation the phrase ‘should not employ’ was used”.⁹⁷ Indeed, he confirmed that “if the word ‘sack’ was used then I would have remembered it”.⁹⁸
2. This episode is important also for another reason. Of all the four particularized episodes relating to the 2nd Allegation, this is the one explored in the greatest depth with the most details in these proceedings, and there is much documentary evidence against which the credibility of the witnesses can be assessed.
3. While a particular witness is found not to be credible or to have fabricated evidence on one particular issue is not necessarily determinative of the veracity of his evidence on other matters, where such finding relates to a central issue of the Inquiry, and it is shown very clearly that he has embellished the evidence in a substantial way in order to booster an allegation which is less than solid, the Commission is entitled to regard this as a highly material consideration in assessing the **strength** and **quality** of the overall testimony given by this witness in the Inquiry, especially his testimony concerning to the said type of issue.

The Episode

4. At the time when Prof Luk made the 2nd Allegation in the 10,000-word letter, it was in the form of a general accusation that some government official(s) had often asked Prof Morris to sack staff. At the radio interview by RTHK on 5.2.07, he narrowed down the number of government official(s) to one, but referred to “at least four”

⁹⁷ Day 10/62:25-63:14 [32].

⁹⁸ Day 10/92:15-22 [33].

staff members said to have been involved in this Allegation.⁹⁹ Prof Morris, by his own admission, does not have a good memory.¹⁰⁰ The first time he had the occasion to really think deep and hard about the events in question to try to remember what actually happened was when this Inquiry was established.¹⁰¹

5. When Particulars of the 2nd Allegation were requested on 1.3.07, and ordered by the Commission on 6.3.07, Prof Morris consulted his secretary, his diary and other documents to establish the link between the alleged conversations and the dates and names of staff involved.¹⁰² Among the documents discovered was an email he wrote to Dr Leung on 19.9.03 where he stated as follows:-

“There is, I think also another more personal aspect to this whole scenario which I think I’d better inform you about before you discuss it with Fanny. She has often asked me about the contribution of certain colleagues and encouraging me to basically get rid of them.¹⁰³ The colleagues in question are doing a good job and the only real issue, I think, is that they have written regularly in the media in ways which have been seen to be critical of government policy.

Also last October, she got very agitated and contacted us to complain when we made public comments about the non-implementation of the *all graduate all trained teachers* policy and organized a seminar to discuss small class teaching. Her complaint was basically that we were not supporting government policy. I wrote back to her and basically said it was part of the role of an autonomous institution to engage in and contribute to such discussions. Simon was fully aware of these communications and I’d be happy to send them on to you.

⁹⁹ Radio Interview transcript (5.2.07) [EMB 11/10/52].

¹⁰⁰ Day 11/20:11-17 [34].

¹⁰¹ Day 10/50:2-7 [35].

¹⁰² Day 10/54:9-55:21 [36].

¹⁰³ Referring to this allegation, Prof Morris said that “I cannot remember the details, and I have no information on them”: Day 6:103:3-8 [37]. Also, he cannot remember whether Mrs Law allegedly used the words “fire”, “sack” or “dismiss”: Day 10/92:6-14 [38]. No particulars have in fact been given on this at all.

So, basically I think her stance towards the HKIEd may have as much of a personal element as well as a policy one in it.”¹⁰⁴

6. In addition, Prof Morris found a letter dated 4.11.02 in reply to Mrs Law’s letter dated 31.10.02 on “All Graduate, All Trained” in which he referred to a “telephone conversation on 30 October”. There, he stated: “You contacted me to enquire why we had organized a seminar at the HKIEd on Small Class Teaching and you queried the personnel who had been invited. Your concern was that the participants had expressed views contrary to government policy and these had been reported in the media”.¹⁰⁵ The Small Class Teaching seminar referred to was the same seminar mentioned in his 19.9.03 email to Dr Leung.
7. The Media Relations Office also dug up a HKIEd’s press release dated 30.10.02 and a number of newspaper reports on the “All Graduate, All Trained” press conference held on the same day.¹⁰⁶ Dr Lai Kwok-chan’s photograph featured prominently in the newspaper articles shown to Prof Morris.
8. By sheer coincidence, 30.10.02 happened to be the day when Mrs Law called up Prof Morris to talk about the Small Class Teaching seminar.
9. It is plain from the entirety of the evidence that Prof Morris drew the connection between Dr Lai and the Small Class Teaching seminar from the documents which he saw after Prof Luk was required to furnish Particulars of the 2nd Allegation. This was also true with Ip Kin-yuen, who was mentioned on the seminar information sheet as being one of the four “invited speakers” (the others being The Hon Cheung Man Kwong, Mr Fung Man Ching and Mr Tang Siu Hung). The seminar was chaired by Prof Cheung Yin-cheong.¹⁰⁷
10. The Media Relations Office also located the media report referred to in Prof Morris’ letter of 4.11.02. This was the Sing Tao article of 30.10.02 reporting on the seminar. Apparently, Prof Morris did not have this document translated to him. This resulted in his mistake of

¹⁰⁴ MLA1/18/206.

¹⁰⁵ MLA1/16/190.

¹⁰⁶ MLA1/15/173-186.

¹⁰⁷ MLA1/16/198.

assuming that Dr Lai's name was mentioned in the Sing Tao article. He had this assumption at the time when he furnished the Particulars. After he realized this mistake, he spoke to Prof Luk to find out what connection (if any) there was between Dr Lai and the seminar.¹⁰⁸ This took place "a week or ten days" prior to 11.4.07, after he started giving evidence to this Commission.¹⁰⁹

11. At the time he started giving his evidence in chief, therefore, Prof Morris would have thought that the documentary evidence was supportive of his allegation that *both* Ip Kin-yuen and Dr Lai were mentioned in the 30.10.02 phone call.

Evidence-in-Chief

12. In his evidence in chief, Prof Morris alleged that Mrs Law asked him: "why we employed Ip Kin Yuen and Lai Kwok Chan. She then went on to say Ip Kin Yuen doesn't do any research, he hasn't got a PhD, why did we employ them, and she told me I should sack them".¹¹⁰
13. With regard to Dr Lai, his evidence was as follows:-

"Q: That's Dr Lai?

A: Dr Lai, yes. Can I say that in conversations like this and others I had, Mrs Law started with a barrage of questions that's very difficult to respond to: 'Why do you employ them? What are they doing? Why do you allow that to happen?', and then she goes on to make statements, and that is the order in which the conversation proceeded.

Q: How did you respond to her?

A: *Basically I suggested that if she didn't agree with their views she should contact them directly. I just take the view that unless what they say is illegal or immoral then they have the*

¹⁰⁸ Day 10/105:17-23 [39].

¹⁰⁹ Day 10/99:19-100:15 [40].

¹¹⁰ Day 5/101:17-20 [41].

right to express their views. I was certainly going to make no attempt to discontinue their employment at the IEd.”¹¹¹

This was all said against the background of the Small Class Teaching seminar held on 29.10.02.

14. It is simply *untrue* that Prof Morris had suggested to Mrs Law to “contact *them*” directly if she did not agree to the *views* of Ip Kin-yuen and Dr Lai. This would imply that Mrs Law had been critical of such *views*. All this is *untrue* because:-

(1) Dr Lai expressed *no views* at the seminar. His evidence was that he “did not walk around the audience and distribute the pamphlet” for the next small class teaching seminar to be held on 19.11.02. He was there for about 20 minutes. He was not a speaker at the seminar.¹¹² He was just an “interested observer, because [he] knew that seminar was a promotion opportunity for the November seminar”.¹¹³ He did not speak at the seminar at all.¹¹⁴ He did not take part in organizing the seminar; his only role was to supervise his staff in the preparation of the announcement. He agreed that it would be a fair statement to say that “to a third party, somebody who didn’t know about what was happening, they would only see you as present at the seminar, but would not see you as taking part in that seminar”.¹¹⁵ In cross-examination, Prof Morris admitted that he cannot say that Mrs Law wanted Dr Lai to be dismissed “because he was critical of Government policy or the implementation of government policy”.¹¹⁶

(2) Prof Morris confirmed that when he said in his letter of 4.11.02 that Mrs Law “queried the personnel who had been invited”, that was a reference “directed to the PTU and Cheung Man Kwong” and “the fact that they were invited”.¹¹⁷ This is consistent with the evidence of Ip Kin-yuen about a subsequent

¹¹¹ Day 5/102:4-18 [42].

¹¹² Day 19/3:15-4:25 [43].

¹¹³ Day 19/5:18-23 [44].

¹¹⁴ Day 19/5:24-6:6 [45].

¹¹⁵ Day 19/6:7-20 [46].

¹¹⁶ Day 10/104:12-18 [47].

¹¹⁷ Day 10/70:12-22 [48].

phone call he had with Mrs Law: “The main point was that she accused me as to why Cheung Man Kwong was invited”.¹¹⁸ The same is confirmed in Mrs Law’s evidence.¹¹⁹ She was **not taking issue with the views** expressed by Ip Kin-yuen at the seminar at all.

- (3) Indeed, Mrs Law confirmed that she did not know that Dr Lai was involved with the seminar on 29.10.02,¹²⁰ or that he expressed any views at all at the seminar.¹²¹ She did not recall Prof Morris mentioning Ip or Lai in the telephone conversation on 30.10.02.¹²² On his part, Prof Morris’ evidence could not remember exactly what he said to Mrs Law about the seminar.¹²³ Particularly, Mrs Law was not aware that Dr Lai had distributed any pamphlets at the seminar, or that he had authorized anyone to distribute such pamphlets.¹²⁴ She did not know of any article, book or anything at about published by Dr Lai about small class teaching, or that Dr Lai was in any way involved in small class teaching or the promotion of small class teaching at that time.¹²⁵ She was also not aware of what views Ip Kin-yuen had expressed at the seminar, or that Ip was involved at that time, since the Sing Tao article did not report on Ip’s presence, or any views that he had expressed.¹²⁶ She did not refer, and could not have referred, “to the views either of Dr Lai or Mr Ip on small class teaching” in the telephone conversation.¹²⁷ Mrs Law rightly said that Prof Morris’ evidence of him saying to Mrs Law “*that if she didn’t agree with their views she should contact them directly*” was “fabrication”.¹²⁸

Cross-examination

118 Day 20/7:1-8 [49].
119 Day 29/52:12-53:12 [50].
120 Day 29/15:13-16:15; 20:9-18 [51].
121 Day 29/35:10-12 [52].
122 Day 29/16:1-5 [53].
123 Day 6/66:9-17 [54].
124 Day 29/24:15-23 [55].
125 Day 29/32:8-33:8 [56].
126 Day 29/35:13-20 [57].
127 Day 29/53:17-19 [58].
128 Day 29/54:22-55:5 [59].

15. In his witness statement, Prof Morris had said that the seminar was “promoting ideas contrary to Government policy”.¹²⁹ This was challenged in cross-examination since there was at that time no government policy against small class teaching. Prof Morris’ retort, however, was: “There was certainly no policy ... that I am aware of to reduce class size”, thereby implying that if there is no such policy for the time being then he says that “the policy was not to reduce the class size”!¹³⁰ He also regarded the Government’s decision to conduct a pilot study to find out the relationship between small class teaching and the effectiveness of student learning as a delaying exercise.¹³¹
16. Further, Prof Morris confirmed that “the only reason, looking back, that I could speculate as to why Mrs Law might have included his (Dr Lai’s) name in the telephone conversation” was that “he was actively distributing a pamphlet or a flier” at the seminar.¹³² He explained how he came to know about this matter as follows:-

“Q: In particular, did you discuss with Prof Luk about this matter?

A: I think subsequent to what’s gone on in the inquiry I asked him ‘Given that KC Lai’s name is not mentioned in the press article, what do you think the connection could be?’, and he said he understood he had been distributing pamphlets or leaflets.

Q: When did this conversation take place?

A: A week or ten days ago.

Q: A week or ten days ago?

A: Yes. It was only – I was not aware that Dr Lai was not mentioned explicitly I think in the Sing Tao until this inquiry. The wording here in the second allegation is I think taken from Prof Luk’s letter, which, as I said, if I had been party to that letter before it was published, I wouldn’t use this wording.

¹²⁹ Morris §49 [W1/16/99].

¹³⁰ Day 6/76:3-14 [60].

¹³¹ Day 6/83:11-12 [61].

¹³² Day 6/108:18-109:19 [62].

Q: So this conversation that you had with Prof Luk, was that before or after you started giving evidence to this Commission?

A: I think it was after, because it was only then that I was aware that his name was not mentioned, when it was raised in the Commission.

Q: I see. Professor, perhaps I should clarify this: you have been told, have you not, that during the time you give evidence you are not supposed to discuss the contents of your evidence with anyone, including your lawyers?

A: Well, my apologies.”¹³³

17. This evidence is extraordinary. Prof Morris was the person who actually spoke to Mrs Law and, if he had any recollection at all, would have known precisely what Mrs Law was complaining about the Small Class Teaching seminar held on 29.10.02. Instead of giving truthful evidence based on his *own* recollection, Prof Morris asked Prof Luk, who was not even employed by the HKIED at the time, to tell him (Prof Morris) what the connection was between the seminar and Dr Lai *in order to booster his case of dismissal regarding Dr Lai*.
18. There are numerous other flaws in his case regarding this episode:-
 - (1) He had written to Mrs Law in May 2002 when he was concerned with the report on an interview given by Mrs Law to the SCMP.¹³⁴ Yet, when he wrote the letter of 4.11.02 to deal with Mrs Law’s concerns regarding the “All Graduate, All Trained” press conference conducted by Dr Lai on 30.10.02, and referring in such letter to the very telephone call he had with Mrs Law earlier that day, he made *no mention* at all of Dr Lai or Ip Kin-yuen or that Mrs Law had wanted them to be “fired”. Prof Morris’ only response was: “I must have made the decision that I wasn’t going to raise it formally to her in a letter because I thought it would do more harm than good”, although

¹³³ Day 10/99:19-100:21 [63].

¹³⁴ MLA1/13/165.

he admitted immediately that was from an “inference” rather than recollection”.¹³⁵

- (2) It is highly implausible that Mrs Law should have picked on Dr Lai when there was no connection between him and the seminar, and not on Cheng Yin-cheong, who chaired the seminar. Prof Morris’ response was: “I would have assumed that this was because YC was not an active advocate – I would imagine he’d be chairing this in a fairly neutral capacity”.¹³⁶ Yet, Prof Morris thought that the handing out of fliers to promote a future seminar was apparently sufficient to trigger the alleged request for Dr Lai to be “dismissed”.
- (3) Prof Morris testified that he “verbally would have informed the chairman of council” of Mrs Law’s alleged dismissal request.¹³⁷ Yet, Dr Simon Ip (who was chairman at the time) confirmed in evidence that if Prof Morris had told him about a call from Mrs Law asking him to dismiss a staff member, that would have registered in his mind and he would have investigated the issue as thoroughly as he could to satisfy himself that there was a problem and then would have taken the matter up with Mrs Law directly.¹³⁸ Indeed, this would have been the proper way to handle such a serious matter. However, Dr Ip confirmed that he had no recollection of anything in the nature of the 2nd Allegation¹³⁹ and, if that had indeed happened, he “would have expected Prof Morris to inform him” of such incidents.¹⁴⁰
- (4) Prof Morris had no recollection of telling the incident to Prof Grossman,¹⁴¹ Prof Moore¹⁴² or Katherine Ma.¹⁴³
- (5) Prof Morris, while referring in his 19.1.03 email to Dr Leung to the Small Class Teaching seminar, he made no mention of any

¹³⁵ Day 10/69:7-70:11 [64].
¹³⁶ Day 10/71:12-72:8 [65].
¹³⁷ Day 10/78:21-79:4; 105:24-106:10 [66].
¹³⁸ Day 16/81:13-82:5 [67].
¹³⁹ Day 16/82:24-83:1 [68].
¹⁴⁰ Day 16/120:22-25 [69].
¹⁴¹ Day 10/85:12-20 [70].
¹⁴² Day 10/85:21-86:13 [71].
¹⁴³ Day 10/86:18-87:1 [72].

request to dismiss Ip Kin Yuen and Dr Lai.¹⁴⁴ Prof Morris said, however, that “I would have mentioned the details to him verbally”.¹⁴⁵ This was denied by Dr Leung.

- (6) There was nothing in the public domain to show that Mrs Law was not a supporter of small class teaching.¹⁴⁶
19. All of the above are set against the friendly relationship between Ip Kin-yuen and Mrs Law on 30.10.02. This is supported by the email correspondence between them concerning the Singapore movie (“I Not Stupid”) and Ip’s request to Mrs Law to write the Foreword to Ip’s book.¹⁴⁷ Ip’s own evidence was as follows:-

“Q: It would be correct to say that around about that time, and we are talking about October, when the foreword was written, in 2002, you had a very, very good relationship with Mrs Law?

A: Yes, I am sure of that.”¹⁴⁸

As to whether the telephone call he received from Mrs Law round about 30.10.02 affected that relationship, Ip replied: “for my perception I would say that should not have any adverse effect on the good relationship between the two of us”.¹⁴⁹ The timing of that call does not affect this point: Ip believed that this took place on the day after the seminar (ie 30.10.02)¹⁵⁰ and, on Mrs Law’s evidence, this “most likely occurred after [she] received the materials on the small class teaching” from Prof Morris, which was 4.11.02.¹⁵¹ In any event, Mrs Law agreed with Ip when she said, as at 4.11.02 (after the telephone call with Ip) “we were very friendly and I would say the talk [with Ip on small class teaching and the Shanghai experience referred to in Ip’s email of that date] was also cordial”.¹⁵² Ip confirmed this when he said: “from my personal perception I would

¹⁴⁴ Day 10/91:21-24 [73].

¹⁴⁵ Day 10/94:10-14 [74].

¹⁴⁶ Day 10/106:19-22 [75].

¹⁴⁷ EMB 11/2/14-18.

¹⁴⁸ Day 20/37:11-15 [76].

¹⁴⁹ Day 20/37:16-38:6 [77].

¹⁵⁰ Day 20/9:21-25 [78].

¹⁵¹ Day 29/42:16-44:9 [79].

¹⁵² Day 29/41:21-42:1 [80].

say that because at that time the relationship between Mrs Law and I was a good one, so I would say that talk should be or must be of friendly nature”.¹⁵³

20. Notwithstanding all of the above, Prof Morris persisted in his allegation that Mrs Law had asked him to “fire” both Dr Lai and Ip Kin-yuen:-

“Q: Maybe I should ask you this: did you actually think that she really meant to ask you to dismiss the staff?

A: Yes.

Q: So she was saying not in jest but in all seriousness; is that what you are saying?

A: She was very serious.”¹⁵⁴

Evidence of Prof Luk

21. In his evidence, Prof Luk alleged that Dr Lai was a “collaborator with Ip Kin Yuen almost from the beginning, right from the beginning, somewhere in the middle of 2002 and they co-organised the seminar that took place at the end of October 2002, even though Lai Kwok Chan’s name was not on it, because he was more heavily involved with the next conference, the one in November 2002, which the book [given to him by Ip] specifically covered. The November conference was intended both as a follow up and an expansion on the one in October 2002”.¹⁵⁵ He said he looked up Dr Lai one day before the hearing and asked him exactly what went on, according to his memory.¹⁵⁶ This took place after he had supplied the Particulars to the Commission, some time between 1.3.07 and 9 or 12.3.07.¹⁵⁷ When cross-examined by Benjamin Yu SC:-

¹⁵³ Day 20/38:18-39:21 [81].

¹⁵⁴ Day 10/89:3-8 [82].

¹⁵⁵ Day 14/40:6-41:3 [83].

¹⁵⁶ Day 14/42:8-22; 118:20-119:10 [84].

¹⁵⁷ Day 14/120:5-9; 121:14-24 [85].

“Q: From that discussion, your understanding was that Dr Lai was one of the persons responsible for organizing the seminar in October 2002?

A: That’s right.”¹⁵⁸

22. This, of course, is *untrue*. As stated above, Dr Lai did not take part in organizing the seminar; his only role was to supervise his staff in the preparation of the announcement, and that “to a third party, somebody who didn’t know about what was happening, they would only see you as present at the seminar, but would not see you as taking part in that seminar”.¹⁵⁹

23. Then, in his cross-examination by Mr Yu SC the following day (Day 15), Prof Luk changed his evidence:-

“Q: From your conversation with him, which would be this year – and that would be about March?

A: Yes.

Q: Did you get a further understanding from [Dr Lai] about his involvement in the seminar? I refer to the October 2002 seminar.

A: Yes, I know. The understanding that I got from him is that he took part in that seminar but he was not able to attend the whole length of it because there was a time conflict with another event.

Q: Yes. But was he a collaborator or was he a person who was responsible for organizing that particular seminar in October 2002?

A: I did not specifically ask it, because I assumed that he was.

Q: You assumed that he was?

A: Yes.”¹⁶⁰

¹⁵⁸ Day 14/121:25-122:3 [86].

¹⁵⁹ Day 19/6:7-20 [87].

¹⁶⁰ Day 15/17:7-23 [88].

24. This answer, while contradicting his earlier answer (as shown in §20 above), landed Prof Luk in further difficulty:-

“Q: The question is, if you had known that Dr Lai was not just distributing fliers but in fact he was a collaborator, why did you not tell Prof Morris of that when he asked you?

A: I thought the question that was being discussed in the hearing was not whether Lai Kwok Chan was a collaborator or not but how his participation became known to the public, and that eventually would have gotten back to Mrs Law. So I think the line of questioning was, if Lai Kwok Chan’s name was not on the programme, what did he do publicly that would have caught the attention of anyone? So the emphasis there was on the distribution of leaflets, as a piece of evidence that he actually was there and had a public face about it”¹⁶¹.

25. In explaining why he thought Dr Lai was a collaborator, Prof Luk referred to the book on Small Class Teacher which Dr Lai had given to him during his induction in late September/early October 2003. He said: “I read the preface ... in the middle paragraph it refers to ‘we’ organizing the conference ...

“Q: Pausing there, the book that you were referring to, the thick book, that was referring to the November seminar, wasn’t it?

A: Right, but then it said that they had published this one before, and that they organized the conference ... on the basis of the pamphlet that they published, that they distributed.”¹⁶²

26. Such logic is highly convoluted. The fact is, there is no direct or indirect reference to Dr Lai being a collaborator, or co-organizer, of the October 2002 seminar. Dr Lai’s evidence is contrary to Prof Luk’s suggestion that he played any such role.

¹⁶¹ Day 15/21:3-16 [89].

¹⁶² Day 15/25:8-26:3 [90].

27. Then, Prof Luk changed his evidence yet again on the question of why he did not tell Prof Morris of Dr Lai's alleged role as collaborator (as shown in §24 above):-

“Q: So my question, Prof Luk, is having regard to that [the fact that there was nothing to connect Dr Lai with the seminar in the Sing Tao article], which I presume you were aware of as being one line of cross-examination by Mr Johnny Mok, it would have been extremely relevant to say to Prof Morris that, ‘Of course Dr Lai was a collaborator of the seminar. Look at the books he published with Mr Ip’?”

A: I probably did refer to that, because when preparing the bundle to submit to the Commission I photocopied the preface of this book. It should be in the bundle.

Q: I don't think we actually have that in the bundles. It doesn't matter.

A: But I did point out to Prof Morris when we were preparing the bundle, and I'm sure – I assume that his secretary, Ms Doreen Cheng, would have explained it to him.

Q: So your evidence is that you have told Prof Morris not only that Dr Lai distributed fliers but also that he was a collaborator of the seminar?

A: I probably didn't put too much emphasis on the latter point, because it was something that I had assumed all along and I also assumed that he had known all along, so what he needed to do at that point was to show evidence that Dr Lai was actually there.”¹⁶³

28. In summarizing his evidence in cross-examination, Mr Yu SC put to Prof Luk that what happened was that there was first of all a mistake on the part of Prof Morris and then “there was an attempt to embellish the evidence”.¹⁶⁴ The mistake was that Prof Morris had got confused and thought that the telephone conversation referred to Dr Lai,

¹⁶³ Day 15/26:22-27:19 [91].

¹⁶⁴ Day 15/28:13-18 [92].

because he featured very prominently in many newspapers and his picture was taken.¹⁶⁵

29. The embellishment, as explained by Mr Yu SC, included the following:-
- (1) It was pointed out during cross-examination by counsel for Prof Li and Mrs Law that there could be a mistake in relation to Dr Lai, because Dr Lai actually did not take part in the seminar, and he was only involved in a later event, which happened coincidentally on the next day but after the telephone conversation.¹⁶⁶
 - (2) When Prof Morris was asked about all that, he had to speak to Prof Luk to find out. From what he was able to learn from Prof Luk, the only role that he told the Commission that Dr Lai played was distributing pamphlets or fliers.¹⁶⁷
 - (3) When Prof Luk came to give evidence, then he said that in fact Dr Lai's involvement was much more. It was not just distributing fliers, he was actually in fact a collaborator.¹⁶⁸
 - (4) All this may indicate in fact that the recollection of Prof Morris on this is not solid, and that after the particulars were given attempts were then made to try to patch up.¹⁶⁹
30. In the end, Prof Luk had to concede that he was "not in a position to say whether Mrs Law would have known about Dr Lai's alleged involvement in the organization of the seminar, as there is no evidence of this in the public domain."¹⁷⁰

Executive Summary

¹⁶⁵ Day 15/27:25-28:4 [93].
¹⁶⁶ Day 15/29:13-18 [94].
¹⁶⁷ Day 15/29:20-25 [95].
¹⁶⁸ Day 15/30:1-6 [96].
¹⁶⁹ Day 15/30:7-10 [97].
¹⁷⁰ Day 15/31:12-18 [98].

- (1) *This episode is analyzed in some detail because it illustrates the **quality** of evidence which Prof Morris and Prof Luk are presenting to this Commission to convince it that there is substance to this allegation.*
- (2) *The **quality** of their evidence may be summarized by the following propositions:-*
 - (a) *Only Prof Morris had first-hand information about the 2nd Allegations, yet he has admitted having a poor memory of dates and events. He is also highly sensitive and is prone to making generalized allegations based on his own interpretations rather than on facts.*
 - (b) *Rather than recollecting the actual telephone conversation between himself and Mrs Law, he sought to re-construct it by piecing it together from the available documents.*
 - (c) *He was careless in doing this exercise and was mistaken that Dr Lai had a substantial involvement in the Small Class Teaching seminar, as he had assumed that Dr Lai had featured prominently in the Sing Tao article.*
 - (d) *When he became aware of this mistake, he went to Prof Luk to ask him to find another connection, even though he knew that when giving evidence in court he should not be discussing his evidence with anyone.*
 - (e) *Prof Luk then told him that Dr Lai was distributing pamphlets or fliers during the seminar to promote a future event in small class teaching. This, however, is untrue, since Dr Lai said in evidence that he was not physically distributing the fliers himself.*
 - (f) *Prof Luk was apparently not satisfied with this pamphlet-distribution theory, so when he gave evidence, he came up with a new connection, namely, that Dr Lai was a collaborator and co-organizer of the seminar. At first, he alleged that Dr Lai had told him of this when he asked*

Dr Lai about his involvement. This of course is untrue, since the only involvement of Dr Lai, according to his evidence, was that he supervised the making of the announcement.

- (g) Prof Luk later changed his evidence by saying that he had assumed Dr Lai to be a collaborator from reading the preface of a book given to him during his induction period. This, again, is untrue since neither of the books co-edited by Dr Lai and Ip Kin-yuen says that Dr Lai was a co-organizer of the October 2002 seminar.*
- (h) In any event, Prof Luk's collaborator theory was an after-thought, as he did not tell Prof Morris of this even when the latter came to him seeking help to find a connection between Dr Lai and the seminar in the midst of him giving evidence in court.*
- (3) Looking at the evidence in its entirety, Prof Morris' allegation that Mrs Law had asked him to "fire" Ip and Dr Lai in the telephone conversation on 30.10.02 is full of flaws.*
- (4) In particular, given that Dr Lai expressed no views whatsoever at the seminar, and Mrs Law was unaware of what views had been expressed by Ip, Prof Morris could not have said (as he alleged in evidence-in-chief) words to this effect: "Basically I suggested that if she didn't agree with their views she should contact them directly". Mrs Law is perfectly justified in calling this statement a "fabrication".*
- (5) While it is true that when a witness lies on one matter, it does not necessarily mean that he cannot be believed on other matters, what we have seen is fabrication of evidence in a central issue in this Inquiry, namely, credibility of the allegation that Mrs Law had asked him to "fire" HKIEd's staff. The Commission must, in the present circumstances, be extremely cautious towards the evidence of Profs Morris and Luk on this same issue in connection with the other Particulars of the 2nd Allegation.*

CHAPTER 5

2ND ALLEGATION – 19 NOVEMBER 2004

1. This episode concerned Dr Wong Ping Man. Like the previous episode on 30.10.02, this one is significant for a slightly different reason. It is highly revealing of Prof Morris' bias against Mrs Law in that, notwithstanding the absence of any *solid* foundation for the making of a *serious* allegation, he nevertheless insisted (in answer to the Chairman's question) that he was "left with this ... unmistakable or distinctive impression that she was encouraging [him] to sack Mr Wong", even though he conceded that "it certainly was not explicit".¹⁷¹

Evidence-in-Chief

2. In Chief, Prof Morris said:-

"In November 2004 – I believe it was November 2004 because I am certain that it occurred on campus, and I think the only time I met Mrs Law on campus that year was for the graduation ceremony where she was one of the guest speakers – we had a very short conversation in which she took me to the side and said, 'Who is this guy, Wong Ping Man? What is he doing working for you? Why do you employ him?' I was quite taken aback but before I could answer, somebody else came up to say hello, because this was sort of a public setting we were in."¹⁷²

He further elaborated:-

"Why did we employ him what was he doing here. It was a series of questions and I didn't have time to get an answer in."¹⁷³

That was it.

¹⁷¹ Day 4/45:7-21 [99].

¹⁷² Day 5/103:2-12 [100].

¹⁷³ Day 5/103:22-24 [101].

Cross-examination

3. The *poor quality* of Prof Morris' evidence on this episode is demonstrated by the following sequence of questions and answers in cross-examination:-
- (1) He was “not positive”, and “cannot be certain”, that he mentioned to Prof Luk the name of Wong Ping Man before Prof Luk's interview with the RTHK on 5.2.02.¹⁷⁴
 - (2) He did not tell Prof Luk the circumstances when it was said that Dr Wong had to be fired “until recently”, when he had to go back to his diary “recently” to identify the occasions when he might have met Mrs Law on the campus, and he had “only recently done that”.¹⁷⁵
 - (3) As to the timing of when he told Prof Luk about the circumstances, Prof Morris said:-

“I think before the telephone interview took place and not immediately before but sometime before I had mentioned Wong Ping Man's name to him. It was somebody that I had had a telephone conversation with Mrs Law about. I certainly wasn't myself sure of the details until my recent attempts to try to pin that date down. I certainly didn't tell him before his radio interview”.

Prof Morris pinpointed the time as when he was “asked by the Commission to try to be specific about the dates and times of the occasions”, ie March this year.¹⁷⁶

- (4) He confirmed that he “didn't have a specific discussion before this radio interview with [Prof Luk]” about this episode, but he

¹⁷⁴ Day 6/36:3-7 [102].

¹⁷⁵ Day 6/38:6-21 [103]. Prof Luk's evidence was that he thought “vaguely”, Dr Wong's name was brought up in “very late 2004, early 2005”. He did not asked Prof Morris exactly what Mrs Law had said to him about Dr Wong, or for the circumstances in which Mrs Law had this alleged conversation with him: Day 12/150:16-151:12 [104].

¹⁷⁶ Day 6/39: 5-24 [105].

“had over the years many discussions with [him]”.¹⁷⁷ In fact, he said: “I don’t remember telling him anything specifically about the circumstances”.¹⁷⁸

- (5) Immediately after he said that, Prof Morris’ evidence changed when he “referred sometime earlier to having had a conversation about Wong Ping Man”, and went on to say this:-

“My normal practice would be that I would keep Prof Luk informed as to incidents, activities, developments, in the Institute, and in so doing I *imagine* that I would have, as part of that normal practice, told him about this conversation” about Dr Wong.¹⁷⁹

- (6) However, when he was asked whether he was certain that he “would have told” Prof Luk about this conversation, Prof Morris said: “No, I am not certain”.¹⁸⁰

- (7) When pressed as to what he would have told Prof Luk about the facts of the conversation, Prof Morris suddenly came up with very *specific* details:-

“The incident that would have happened is I had a brief conversation with Mrs Law in which she raised a number of questions about Wong Ping Man, why we employed him, what he was doing here, what did I think of him. It was done in an extremely negative tone and I took it as a strong criticism of asking why the Institute employed him”.¹⁸¹

- (8) Then, he qualified this by saying that he was “adding” his “interpretation” to this incident:-

“As I say, I don’t recollect exactly what I said to Prof Luk. I might have *added my interpretation* that I thought

¹⁷⁷ Day 6/40:12-22 [106].

¹⁷⁸ Day 6/41:8-14 [107].

¹⁷⁹ Day 6/41:15-42:11 [108].

¹⁸⁰ Day 6/42:19-43:1 [109].

¹⁸¹ Day 6/43:2-44:1 [110].

this was – so Prof Luk might have seen this as yet another example of Mrs Law encouraging me to sack staff. I certainly might have *added my interpretation* of how I saw that conversation. But as I have said, it was not an explicit attempt to request me to sack him [*italics added*]”.¹⁸²

- (9) This was when the Chairman interjected and Prof Morris insisted that he was left with the “unmistakable and distinctive impression that [Mrs Law] was encouraging [him] to sack Mr Wong”, although he “might have added [his] interpretation”.¹⁸³
 - (10) Prof Morris said that this “interpretation” was based on his “previous conversations with Mrs Law” (a “previous pattern of behaviour”), but conceded that in relation to Dr Wong there was only *one* previous occasion, namely, the telephone conversation about Ip Kin-yuen and Lai Kwok-chan on 30.10.02.¹⁸⁴
4. Indeed, when cross-examined by Mr Yu SC, Prof Morris accepted that:-
- (1) His alleged conversation with Mrs Law was “not connected to any criticism of Government policy”;
 - (2) The furnishing of Particulars, naming Dr Wong as one of the persons who had been the subject of a request for dismissal as a result of publication of articles, that would be inaccurate;
 - (3) As far as Dr Wong’s and his conversation with Mrs Law was concerned, that was his interpretation, not what she explicitly said;
 - (4) Indeed, he was very surprised that Dr Wong’s name was mentioned; and

¹⁸² Day 6/44:20-45:6 [111].

¹⁸³ Day 6/45:7-18 [112].

¹⁸⁴ Day 6/45:22-47:14 [113].

- (5) As a fair-minded person, there is a possibility that he might be wrong in his interpretation.¹⁸⁵

Evidence of Prof Luk

5. Prof Luk's evidence in relation to Dr Wong is symptomatic of his general approach in this case, as is demonstrated by his testimony regarding Dr Lai Kwok-chan. When he realized that Prof Morris' evidence regarding Dr Wong was again less than *solid*, particularly having regard to the total absence of any reason why Mrs Law would have mentioned Dr Wong (who is "very mild, soft spoken, well-mannered, and totally unoffensive", and "is certainly not known as a critic of the education reforms of EMB")¹⁸⁶, he embellished this episode in this way in his evidence-in-chief:-

“Q: Can you account for this then? There was no reason, as far as Prof Morris and you could see, as to why Mrs Law didn't like him; is that right?

A: No, we really can't think of any rational ground for Mrs Law to dislike him. If we were to speculate, then I suppose one could say we do have another colleague by the name of Wong Ping Ho. It's a different 'Wong', different 'Ping'. Another very mild-mannered gentleman but on the other hand he is the leader of our lecturers' union. As such he had appeared in LegCo on a number of occasions speaking out against the budget cuts, but the budget cuts not only against HKIED but also against the other UGC-funded institutions. He would work with colleagues from other UGC-funded institutions to fight against the budget cuts and he also voiced out his opinion on ed reforms on other occasions.

Q: Educational reforms?

A: Yes. So this is purely speculation, I have no ground for saying this, but I suppose for someone who does not know

¹⁸⁵ Day 10/129:2-130:18 [114].

¹⁸⁶ Day 12/60:25-61:19 [115].

Wong Ping Man and Wong Ping Ho as well as Paul Morris and I do, one could simply confuse the two names.”¹⁸⁷

He said that it is “extremely unlikely” that Prof Morris could have confused the two names.¹⁸⁸

6. In cross-examination, Prof Luk explained that when a Sing Tao Daily article carried four names said to be connected with the 2nd Allegation, “there was an uproar on campus. How could it be? How could it possibly be Wong Ping Man? So at that time, various people said, ‘Could it have been a mistake? Could she have meant Wong Ping Ho?’”¹⁸⁹

7. Prof Luk then justified his mentioning of Wong Ping-ho’s name by saying:-

“So if we had wanted to cheat, we could simply have supplied the name of Wong Ping ho, which would make a good deal more sense.”¹⁹⁰

8. However, Prof Morris never in his evidence mentioned Wong Ping-ho in connection with the 2nd Allegation. It was not until *after* he had given evidence, and *weaknesses* of this episode were fully exposed, that Prof Luk came up with the name of Wong Ping-ho.

Executive Summary

(1) *Profs Morris and Luk, in furnishing the Particulars, named four persons. Even though Dr Wong clearly does not fit within the terms of the 2nd Allegation, his name was put forward as one of the Particulars. They were plainly eager to make good the reference to four staff members mentioned both in Prof Luk’s RTHK interview.*

¹⁸⁷ Day 12/61:22-62:17 [116].

¹⁸⁸ Day 12/62:18-63:3 [117].

¹⁸⁹ Day 14/44:6-19 [118].

¹⁹⁰ Day 14/44:20-22 [119].

- (2) *In his evidence Prof Morris testified that he had an “unmistakable or distinctive impression” that Mrs Law was encouraging him to “sack” Dr Wong.*
- (3) *However, the weaknesses of Prof Morris’ case were fully exposed in cross-examination and he conceded that there was no explicit reference to “sacking”, that he had “added” his own “interpretation” and that it is “possible” that this interpretation was wrong.*
- (4) *Prof Luk, in his evidence, then came up for the first time with the “speculation” that there was a possible confusion between the name of Wong Ping-man and that of Wong Ping-ho, saying that Prof Morris could not himself have confused the two. By implication, if there was a confusion, it would have been confusion on the part of Mrs Law.*
- (5) *The quality of evidence on this episode is such that the Commission cannot possibly be satisfied on even the normal civil standard, let alone a “stricter” standard of proof, that Mrs Law had asked for Dr Wong to be “sacked”.*
- (6) *This episode, however, is significant in further demonstrating (in addition to the 30.10.02 episode) that:-*
 - (a) *Prof Morris is extremely biased towards Mrs Law when it comes to his “interpretation” of conversations with Mrs Law; and*
 - (b) *Prof Luk is eager to patch up the less than solid evidence of Prof Morris by embellishing yet again his own evidence when he introduced, without any foundation whatsoever, the suggestion that Mrs Law might possibly have confused the names of Wong Ping-man and Wong Ping-ho in support of what he knew was a serious allegation against Mrs Law.*

CHAPTER 6

2ND ALLEGATION – NOVEMBER 2004

1. This part of the 2nd Allegation relates to Prof Cheng Yin-cheong alone.

Evidence of Prof Morris

2. Prof Morris testified that, in November, there was a period of 7 or 10 days when Cheng Yin-cheong published a series of articles critical of the ongoing education reform. He said:-

“I received a phone call from Mrs Law saying had I read the articles. She launched into a tirade about what was in them. She was extremely angry; said they were undermining the education reforms and that we had a political agenda; why did the IEd allow him to do this; what did I think of it; and went on extremely angrily about the damage she felt these newspaper articles were doing to the education reform, and said to me that we shouldn’t be employing him at the IEd.”¹⁹¹

3. It is not alleged that Mrs Law used the word “fire” or “dismiss”.

Evidence of Mrs Law

4. On her part, Mrs Law has given clear evidence on her general practice of discussing the critical writings of others. This is to the following effect:-

- (1) She did have one conversation with Prof Morris in which she discussed with him “whether we could do something more positive and I might cite examples that ... sometimes some of these articles might not be helpful and in particular, if the lecturers had such negative views, they would be influencing their students who are serving or potential teacher”.¹⁹²

¹⁹¹ Day 5/105:5-14 [120].

¹⁹² Day 31/100:16-101:5 [121].

- (2) She probably would not go into the details of the article, because if she disagreed with any viewpoints in any articles, she would go directly to the writer.¹⁹³
- (3) On that particular occasion, Prof Morris said there wasn't much he could do. Mrs Law explained: "I expressed concern and he just noted my concern and that there is nothing that he could do to address my concern. We had to find our own ways and we proposed and we did approach the teachers directly".¹⁹⁴
- (4) On that occasion, Prof Morris might have suggested to Mrs Law perhaps she should approach the author directly or perhaps write an article trying to counteract what the author said.¹⁹⁵
- (5) As far as HKIEd is concerned, Mrs Law only contacted Ip Kin-yuen.¹⁹⁶
- (6) It was not Mrs Law's practice to approach a third party about the views expressed by another writer. She approached Prof Morris on a more generic sort of line.¹⁹⁷
- (7) In his conversation with Prof Morris, Mrs Law might have said to him that it was not helpful again to portray the education reform or the education system in Hong Kong as a failure, because difficulties are inevitable and she would hope that we don't portray a very negative image of the teaching profession and all that. In this respect, Mrs Law said that she was really "reconstructing". It was her usual practice and common theme applying not only to Prof Morris but to other educators, teacher educators.¹⁹⁸
- (8) Mrs Law's attitude towards criticisms in fact mirrored precisely Prof Morris' own attitude. As explained by him in his letter to Mrs Law:-

¹⁹³ Ibid.

¹⁹⁴ Day 31/101:8-19 [122].

¹⁹⁵ Day 31/101:23-102:5 [123].

¹⁹⁶ Day 31/103:15-18 [124].

¹⁹⁷ Day 31/103:24-104:5 [125].

¹⁹⁸ Day 31/105:12-23 [126].

“As we both know, public attitudes to the teaching profession are influenced by what is reported in the press and we should make every effort to ensure that the messages we convey are positive and reinforce the vital role of teachers in the development of Hong Kong.”¹⁹⁹

There was nothing unusual, or wrong, for Mrs Law to adopt the same position as that of Prof Morris regarding articles which contained inaccurate information, or materials which was not evidence-based, or which portrayed a very negative image of the teaching profession.

- (9) When she first approached him, probably she asked him whether there was anything that he could do. When he said there was very little he could do and that she better do it some other way, then she would take his advice and not do it again.²⁰⁰
- (10) This must be very early in the days,²⁰¹ ie prior to 2004.
5. It is also Mrs Law’s evidence that she appealed to all the stakeholders to work together and project a positive image of the teaching profession.²⁰² However, she would not have called up Prof Morris in November 2004, which was during the 334 consultation period. At that time, different views were expressed, including even more negative views about not only education reform, but individual subject areas and everything. She would not target Prof Cheng by calling up Prof Morris, just to stop him from writing, because there were other academics from other institutions as well as from HKIED commenting on the 334 reform.²⁰³ During the consultation period, all views were welcome.²⁰⁴
6. Since the EMB introduced the online column in the EMB website in May 2004, Mrs Law found it must be more effective to communicate through the website than to call up individuals to respond to their criticisms. Since then, she had substantially reduced the frequency of

¹⁹⁹ EMB 14/13/1121.

²⁰⁰ Day 31/106:6-19 [127].

²⁰¹ Day 31/106:20-24 [128].

²⁰² Day 30/165:19-23. Also Day 29/86:3-87:22 [129].

²⁰³ Day 30/167:2-13 [130].

²⁰⁴ Day 30/172:20-22 [131].

calling individual writers about their articles, not to mention Prof Morris.²⁰⁵

7. She made general appeals to Prof Morris and to other teacher educators to be more positive about the education reform and to work together to make the reform work. While it is possible that she could refer to individuals in conversations with Prof Morris, she would not pinpoint them to ask “why you should employ them or why do they have political agenda”.²⁰⁶ She also confirmed that she did not ask Prof Morris to dismiss or sack Prof Cheng, or said “why the IEd should employ him or that IEd should not be employing him”.²⁰⁷
8. She disagreed that Cheng Yin-cheong’s articles would hold back the education reform, because the reform was launched in 2000 and, once it started, it generated a momentum of its own and it goes on. Mrs Law’s concern was whether we would deter young people from joining the profession, if we portrayed the teaching profession as overworked and harassed. That was for the future.²⁰⁸

“Transplantation” of Evidence by Prof Morris

9. In further cross-examination by Mr Yu SC, Mrs Law was asked to comment, having regard to her evidence that Prof Morris might have suggested that she should approach the author directly, what she wished to say about her previous use of the word “fabrication” to describe Prof Morris’ testimony that he had said to her (in connection with the 30.10.02 phone call): “if you didn’t agree with their views [referring to Ip Kin-yuen and Dr Lai] then you should contact them directly”. Mrs Law’s response was as follows:-

“... we are talking about different things. I think here, I think it’s a fabrication to suggest that on 30th October [2002], Prof Morris used those words in the telephone conversation, suggesting that I should talk to Mr Ip directly. That was clearly a fabrication. But what Mr Chairman was asking me earlier, had I ever spoken to Prof Morris about any articles or any

²⁰⁵ Day 30/167:23-168:10 [132].

²⁰⁶ Day 30/169:6-14 [133].

²⁰⁷ Day 29/85:23-86:5 [134].

²⁰⁸ Day 30/171:6-15 [135].

views and I said I might have in the very early days and Prof Morris might have said to me that, you know, there was very little he could do with any of these things, which has nothing to do with the small class teaching, nothing to do with staff dismissal, nothing of that sort, it was just a general description of the situation ... And I see that Prof Morris *might have used that conversation and sort of transplanted it into all the alleged telephone calls [italics added]*".²⁰⁹

Mrs Law's above comment applies equally to Dr Lai, who Prof Morris alleged was also mentioned in the 2002 conversation.

10. The above is a good illustration of the manner in which Prof Morris mixed up conversations which took place at different times. It is clear that Mrs Law did *not* convey, and could *not* have conveyed, to Prof Morris any criticisms of the *views* of Ip Kin-yuen or Dr Lai (if any) expressed at the Small Class seminar on 29.10.02 for the reasons set out in paragraph 14 of Chapter 4 above. By "transplanting" his statement to Mrs Law made in a completely different occasion (ie suggesting to her to contact the writers directly) into the 30.10.02 telephone conversation, Prof Morris has in fact *fabricated* evidence in a context where it does not belong.
11. Besides the problem of "transplantation", there are many reasons why Prof Morris' version of his conversation about Prof Cheng is *not credible* and the evidence of Mrs Law is to be preferred:-
 - (1) According to Prof Luk, Prof Morris did not report to him that Mrs Law explicitly told him that he wanted Prof Cheng to be dismissed because he was publishing articles contrary to EMB policy. Rather, this was a "reasonable inference" that he and Prof Morris drew on that occasion because Prof Cheng's articles were published in a long series at the material time. This is confirmed in the following exchange in his cross-examination by Mr Yu SC:-

²⁰⁹ Day 31/107:12-109:8 [136].

“Q: Had Prof Morris and yourself discussed, on any of these occasions when he received a call, to find out what it was that Mrs Law was objecting to?

A: Say in the instance that I cited just now of Prof Cheng Yin Cheong’s long series of articles in the Ming Pao, we did discuss it, and we thought it’s obviously because of this”.²¹⁰

- (2) According to Profs Morris and Luk, Mrs Law had by the time of this episode made a number of requests on previous occasions for HKIED’s staff to be dismissed, and yet nothing was done by Prof Morris in response to such alleged requests. This was explored in Prof Morris’ cross-examination:-

“Q: She must have realized that you were not following up her request?

A: Yes, I would imagine that she did.

Q: So it would be rather futile on her part to be repeating this?

A: Maybe she’s very impetuous. You know, I can’t explain that, what her motives were.”²¹¹

It is highly implausible that Mrs Law would have persisted with any request to dismiss staff if it was plain from Prof Morris’ previous responses that nothing was going to be done about it. This is particularly so, given Prof Morris’ evidence that his relationship with Mrs Law was a poor one.

- (3) Mrs Law further testified that, in her 30 years of civil service career, she was “well aware that there has to be a due process for appointment as well as dismissal of staff. So there is no way that [she] would ever ask anybody or under any illusion that [she] could simply call up the president of the HKIED and then expect him to dismiss any of his staff members, because he

²¹⁰ Day 15/34:19-35:25 [137].

²¹¹ Day 10/135:8-136:3 [138].

couldn't do it on his own".²¹² Indeed, when she was working in the Civil Service Branch, Mrs Law was involved in the review of the human resource management framework for the civil service and, in that process, came to have "first-hand knowledge of the disciplinary procedures within the Government". She was aware that, in disciplinary proceedings, there must be a proper charge and would have expected the procedure for removing an academic staff person in HKIE to follow the same due process. Specifically, she was personally involved in a couple of cases concerning the disciplining of teachers, where the fair hearing procedure had taken 30 months to complete.²¹³ Mrs Law knew that writing critical articles was not a proper ground for dismissing the staff in question.

- (4) The timing of the telephone call according to Prof Morris (November 2004) is highly uncertain. Prof Cheng had published one series of articles in Ming Pao in April 2004. Then he published another series of articles on the 334 reform in November/December 2004. Mrs Law's evidence is that she would not have called up Prof Morris in November 2004, which was during the 334 consultation period for the reasons set out in paragraph 5 above. Indeed, Prof David Grossman's evidence was that Mrs Law's call to Prof Morris about Prof Cheng's employment was reported and discussed by the Senior Management after the Principals' conference in March 2004.²¹⁴ His evidence is consistent with Mrs Law's contention that she did not call Prof Morris in November 2004. However, Prof Morris' evidence was that he received a phone call from Prof Li, not Mrs Law, after the Principals' Conference.²¹⁵ Having regard to his admitted poor memory (particularly as to dates), it is likely that Prof Morris pinpointed the November 2004 date simply because he found that Cheng had published a series of articles at that time, as opposed to any independent recollection that Mrs Law did call him up at that particular time.

²¹² Day 29/83:4-11 [139].

²¹³ Day 29/122:19-127:7 [140].

²¹⁴ Grossman [W1/4/8].

²¹⁵ Morris §29 [W1/12/15].

- (5) During the 334 consultation period (which took place between 19.10.04 to 18.1.05),²¹⁶ the EMB had received nearly 3,380 written submissions,²¹⁷ including the articles which Dr Cheng had published at the Forum of Ming Pao between 24.11.04 and 1.12.04.²¹⁸ Mrs Law's evidence (in response to Prof Morris' evidence-in-chief) was summarized as follows:-

“... there were over 3,000 submissions and we had to take into account all these views, so one person's view, given a professor's status, of course, we attach a lot of importance, but we don't just look at his personal views. I don't agree that Prof Cheng has any political agenda either, because he is someone whom I would respect as an academic and not political at all. So I completely disagree with what Prof Morris alleged.”²¹⁹

Prof Cheng's views expressed in his articles in November/December 2004 constituted part of the 334 consultation. Indeed, all the submissions (including Prof Cheng's) were processed by the EMB and the results were set out in a large table containing both the pros and cons of the 334 reform.²²⁰ It is unlikely that, given this context, Mrs Law would have responded to the criticisms of Prof Cheng by singling him out and asking for his dismissal.

- (6) Finally, where there is a conflict between the evidence of Prof Morris and Mrs Law, the Commission will take into account of the other episodes (relating to Dr Lai, Ip Kin-yuen and Dr Wong) where Profs Morris and Luk have embellished or even fabricated evidence to booster their case regarding the 2nd Allegation.

²¹⁶ Day 29/105:20-106:3 [141].

²¹⁷ Day 29/107:10-11 [142].

²¹⁸ See Prof Cheng's submission to the EMB by letter dated 19.1.05, enclosing the articles he published at the Forum of Ming Pao [EMB 12/22/568-1 to 568-29].

²¹⁹ Day 29/121:20-122:7 [143].

²²⁰ “Summary of Views on Reforming the Academic Structure for Senior Secondary Education and Higher Education” (May 2005) [EMB 13/30/843-944].

12. On the whole, the **quality** of Prof Morris' evidence is such that the Commission cannot be satisfied that his case on Prof Cheng Yin-cheong was made out to the requisite degree of probabilities.

Executive Summary

- (1) *Mrs Law has given clear evidence that she had, on one occasion, spoken to Prof Morris about staff's articles and asked him if he could do anything. After Prof Morris indicated that he could not, and that Mrs Law should contact the writer directly, Mrs Law did not repeat such request in the future.*
- (2) *Prof Morris has taken the latter statement that Mrs Law should contact the writer directly and "transplanted" it onto the telephone conversation of 30.10.02, where such statement did not fit.*
- (3) *Besides the problem of "transplantation", there are many reasons why Prof Morris' version of his conversation about Prof Cheng is not credible and the evidence of Mrs Law is to be preferred:-*
 - (a) *His evidence is inconsistent with that of Prof Luk on whether Mrs Law explicitly referred to the articles published by Prof Cheng in November 2004 as being the subject matter of her conversation with Prof Morris.*
 - (b) *It is highly implausible that Mrs Law would have persisted with any request to dismiss staff if, as alleged by Prof Morris, he had previously, and repeatedly told her that he would not do anything about it and, indeed, nothing was in fact done. This is particularly so, given Prof Morris' evidence that his relationship with Mrs Law was a very poor one.*
 - (c) *Mrs Law was aware that, in disciplinary proceedings, there must be a proper charge and would have expected the procedure for removing an academic staff person in HKIEd to follow the same due process. She knew that*

writing critical articles was not a proper ground for dismissing the staff in question and would not result in any dismissal of staff.

- (d) *The timing of the telephone call according to Prof Morris (November 2004) is highly uncertain and it is unlikely, given his poor memory of dates and events, that Prof Morris would have independent recollection of this. His evidence is inconsistent with both the evidence of Mrs Law and that of Prof Grossman.*
- (e) *There was nothing unusual, or wrong, for Mrs Law to adopt the same position as that of Prof Morris regarding articles which contained inaccurate information, or materials which was not evidence-based, or which portrayed a very negative image of the teaching profession, namely: “we should make every effort to ensure that the messages we convey are positive and reinforce the vital role of teachers in the development of Hong Kong”.*
- (f) *Prof Cheng’s views expressed in his articles in November/December 2004 constituted part of the 334 consultation. Indeed, all the submissions (including Prof Cheng’s) were processed by the EMB and the results were set out in a large table containing both the pros and cons of the 334 reform. It is unlikely that, given this context, Mrs Law would have responded to criticisms of the Prof Cheng by singling him out and asking for his dismissal.*
- (g) *Where there is a conflict between the evidence of Prof Morris and Mrs Law, the Commission will take into account the other episodes (relating to Dr Lai, Ip Kin-yuen and Dr Wong) where Profs Morris and Luk have embellished or even fabricated evidence to booster their case regarding the 2nd Allegation.*

CHAPTER 7

2ND ALLEGATION – 21 APRIL 2005

Background

1. Mrs Law knew Mr Ip Kin-yuen as early as in 1999 when she was the Director of Education. She invited him to be seconded to the then Education Department (“ED”) for a year in the 1999/2000 school year. As he was the first academic seconded to the ED, Mrs Law took it upon herself to negotiate the terms of secondment with the HKIED at the time.²²¹ On 8.4.99, Mr Ip faxed to Mrs Law his then terms of employment. This shows that he was on contract terms with the HKIED and the contract renewal dates were 15.7.99 and 15.7.02.²²² Mrs Law was fully aware that he was on contract terms and was not a superannuated staff member of the HKIED.²²³
2. Mr Ip then joined a Decision Support Group which Mrs Law set up in 1999 as a think tank to advise her on the critical issues in education. After the one-year secondment, Mr Ip returned to the HKIED and played an active role in principal training, involving in many projects commissioned to the HKIED by ED/EMB and other activities of ED/EMB.²²⁴ A list of such activities is found at EMB 12/23/555-557.
3. Mr Ip and Mrs Law maintained a cordial relationship and would see each other 2 to 3 times a year mainly at social gatherings or dinners when there were overseas visitors. They also kept in touch through email or phone from time to time. Mr Ip provided useful contacts for Mrs Law’s visit to Shanghai in April 2000 and she attended his wedding in October 2001.²²⁵ At Mr Ip’s invitation by email dated 9.9.02,²²⁶ she wrote a Foreword for a book that Mr Ip had intended to

²²¹ Law 4th §§44-45 [W2/35/125].

²²² EMB 12/16/222.

²²³ Law 4th §45 [W2/35/125].

²²⁴ Law 4th §§46-47 [W2/35/125].

²²⁵ Law 4th §48 [W2/35/126].

²²⁶ EMB 11/2/16-18.

be published following a series of seminars for vice-principals commissioned by the ED.²²⁷

4. In 2002, when Mr Ip's contract with the HKIEd was up for renewal, he applied to a number of schools for the position of principal. Mrs Law wrote a number of reference letters for him. She knew that he did not succeed in his applications and had renewed his contract with the HKIEd as a result.²²⁸
5. On 7.11.04, Mr Ip was invited as one of the speakers at the seminar at the University of Hong Kong on "Learning Effectiveness and Class Size" which was funded by the EMB.²²⁹

VDS/CRS

6. On 15.1.05, Mrs Law received a memo from Susanna Cheung regarding HKIEd's "Proposed Departure Schemes".²³⁰ Attached to this memo was a proposal referred from UGC on two proposed schemes known as the Voluntary Departure Scheme ("VDS") and Compulsory Redundancy Scheme ("CRS").²³¹ Mrs Law was asked for her advice on whether or not to approve HKIEd's proposed CRS.²³²
7. When Mrs Law read the memo from Susanna Cheung, she also read the document from the UGC and the enclosed proposal from the HKIEd before she gave her approval.²³³ She indicated her approval by writing the word "Agreed" at the top left-hand corner of the memo. She did so after reading the proposal.²³⁴
8. Paragraph 2 of the proposal states as follows:-

"Target Population:

²²⁷ W1/7/37-3 to 37-4.
²²⁸ Law 4th §49 [W2/35/126]; Day 29/63:24-64:6 [144].
²²⁹ EMB 11/14/139-146.
²³⁰ EMB 12/20/460.
²³¹ EMB 12/20/461-465.
²³² EMB 12/20/466-468 §7.
²³³ Day 29/59:13-20 [145].
²³⁴ Day 29/62:7-14 [146].

Academic/teaching staff members (ie including instructors) who are on the Government pension or the HKIED Superannuation Scheme, except those whose retirement age is within 24 months from, and those who have already rendered their resignation before, the Council approval date of this Scheme (ie 27 January 2005).”²³⁵

9. The reference to “staff members ... who are on the Government pension” was relevant to the CRS scheme. These were transferred staff who were previously civil servants employed at the former colleges of education who then joined the HKIED. They were entitled to government pension payment immediately on compulsory retirement under the CRS. This would concern EMB and would have financial implications for the government. Hence, the CRS required EMB’s approval.²³⁶
10. The number of persons joining the CRS would have implication for Government finances or funding. This is because the more academic staff compulsorily retired under this scheme, the more expenditure would be incurred in terms of pension for such staff.²³⁷

Telephone Conversation (21.4.05)

11. Mrs Law knew that Ip Kin-yuen was not a superannuated staff member but was on contract terms of employment, and that he was not eligible for the VDS.²³⁸ At the time of her telephone conversation with Prof Morris on 21.4.05, Mrs Law believed that Mr Ip was still on contract terms at that time.²³⁹
12. The deadline of application to the VDS was 18.4.05. Mrs Law was aware of such deadline.²⁴⁰ On that day, Mr Kesson Lee of the UGC emailed Normal Ngai of HKIED asking: “Would you mind informing us of the number of VDS applications? How many of them are ex-civil servants?” Prior to that day, Kesson Lee had received from the

²³⁵ EMB 12/20/463.

²³⁶ Day 29/60:2-19 [147].

²³⁷ Day 29/60:20-24 [148].

²³⁸ Day 29/60:16-62:6 [149].

²³⁹ Day 29/64:7-11 [150].

²⁴⁰ Day 29/64:17-25 [151].

- Director of Human Resources the details of HKIED's transferred staff who would be eligible for pension from Government.²⁴¹
13. Normal Ngai replied: "I cannot disclose the number of VDS applicants as they have to be considered by the Institute VDS/CRS Selection committee. I can, however, confirm that there is NO transferred staff, as we have repeatedly advised the transferred staff there they would likely not get any immediate pensions if they were to depart from the VDS. We will let you know the final outcome, including the CRS, probably towards the end of this month".
 14. On 20.4.05, Kesson Lee forwarded these email exchanges to the EMB.²⁴²
 15. On 21.4.05, Mrs Law wished to know how many had applied for the VDS and sent an email to Cheng Man Yiu (DS3) and Susanna Cheung (PAS[PDT]), making such enquiry.²⁴³ This resulted in a chain of email in which this query was then pursued.²⁴⁴
 16. The EMB and Mrs Law had an interest in knowing the number of VDS applicants for the following reason. To her understanding, the HKIED had a target of retiring about 65 academic staff members, in order to achieve its savings target of about \$65 million. The intention then was that HKIED would first of all open the VDS scheme to all its academic staff and if they chose to join the VDS, then the number of staff that would have to be compulsorily retired under the CRS (which applied to the "transferred staff" who were ex-civil servants) would correspondingly be reduced. So Mrs Law and the EMB were interested in knowing the number of VDS applicants on two counts. First, if the number of applicants was small, that would mean that the number going for CRS would be high. Second, the experience in the earlier Management-Initiated Retirement Scheme ("MIRS") in 2001/02 had shown that staff distinctly disliked being forced to retire and Mrs Law was concerned that there might be some backlash in case the number was very high.²⁴⁵

²⁴¹ EMB 12/20/469-502.

²⁴² EMB 12/20/527.

²⁴³ EMB 12/20/530.

²⁴⁴ EMB 12/20/528-530.

²⁴⁵ Day 29/65:7-66:1 [152].

17. Mrs Law was personally supportive of the VDS and CRS, as well as the MIRS in 2001/02. As regards the latter, she supported it because, in 1999, the Government had announced a plan to upgrade the sub-degree programmes at HKIED to degree level and many of the staff who were previously employees of the former colleges of education might not possess the qualifications and skills needed to teach at the degree level. So the MIRS was a move to enable the Institute to move one step further towards institutional upgrading and that had Mrs Law's full support.²⁴⁶
18. The wish to see HKIED upgraded as an institution was part of the reasons for Mrs Law's support for the VDS/CRS. At that time, in the 2005/08 triennium, the HKIED suffered a funding cut, as a result of which savings would have to be achieved. Also, the EMB thought that this was an opportunity for the Institute to move towards institutional upgrading if some of their less qualified staff would opt to retire.²⁴⁷
19. There was also some urgency in the matter, as indicated from Normal Ngai's letter to Michael Stone of UGC dated 27.4.05 impressing upon him that "the UGC/Government has agreed to advise the Institute the result [of UGC/Government's approval for the 50 staff members put forward by the HKIED] within 8 – 10 days".²⁴⁸ Mrs Law explained this aspect when cross-examined later by Mr Lee SC:-
- "I think May 12th, if I remember correctly, was the deadline by which day the HKIED had to notify all the staff who joined the scheme, so before then, we had not only to finalise the list, confirm the pension entitlement and give approval, all before 12th May. I think I also asked my colleagues to expedite the processing of the pension entitlement, so that the Institute would not have to pay extra in lieu of notice."²⁴⁹
20. This sets the background to the telephone call from Mrs Law to Prof Morris on 21.4.05. As explained by Mrs Law:-

²⁴⁶ Day 29/66:2-22 [153].

²⁴⁷ Day 29/66:23-67:10 [154].

²⁴⁸ EMB 12/20/533.

²⁴⁹ Day 31/70:1-8 [155].

“A: ... we have estimated a certain sum of money or we have agreed with the [Civil Service Branch] and Finance Bureau a sum of money for paying pension for these officers. We were keen to know whether the sum of money was sufficient because the number of officers or academic staff who joined the scheme would have some bearing on the total outlay on pension.

So I was trying to find out from my staff whether we know the number and they told me that they would have to pass the information to us, but as of 21st April, we still have not received any information from the Hong Kong Institute of Education. So I called up Prof Morris to find out how many have joined the VDS and how many he would expect to join the CRS.

Q: Would that help you in the calculation of the pension?

A: That would certainly have a bearing. Actually, in the end, we had to apply for a supplementary provision, because the number actually exceeded the original estimate.

Q: At the time of your telephone call to Prof Morris, were you aware that the deadline for the VDS had already expired?

A: Yes, I knew the deadline was on the 18th, otherwise I would not have asked.”²⁵⁰

21. On the telephone conversation itself, Mrs Law said:-

“A: I cannot recall word for word, you know, our telephone conversation, but the sole purpose of calling Prof Morris was really to find out the number of academic staff who had joined the VDS and the number that would eventually go into CRS. That would be the gist of our conversation.

Q: Did you in that telephone conversation mention either Mr Ip Kin Yuen or Prof Cheng Yin Cheong?

²⁵⁰ Day 29/71:11-72:9 [156].

A: I do not see any reason of having to mention these two people.

Q: But did you mention them?

A: I did not.

Q: Also, in relation to Mr Ip or Prof Cheng Yin Cheong, with the state of knowledge at least concerning Mr Ip, even if you had been minded to mention them, do you think you would have with the state of knowledge concerning Mr Ip's contractual position?

A: Given that Mr Ip was clearly not eligible, I would not have mentioned his name at all.

Q: Even if you had wanted to?

A: Yes.”²⁵¹

22. Mrs Law then explained that it was implausible that she would have persisted with any request to dismiss staff if it was plain from Prof Morris' previous responses that nothing was going to be done about it. Her evidence on this has already been set out in paragraph 11(2) of the preceding Chapter. In respect of the particular phone call on 21.4.05, Mrs Law went on to testify as follows:-

“Notwithstanding his [Prof Morris'] feelings and depth of negativity towards me, I think, you know, as a person, I maintain a professional working relationship, because this is my philosophy, that I tackle the issue, not the person. You know, if I had to deal with him, I continued to call him up. But as I said earlier, you know, I would be insane to really continuously ask for dismissal of staff again and then made the same request and on an occasion which was clearly impossible. You know, we are talking about voluntary departure scheme. You cannot get rid of any staff member without their consent and if we are talking about compulsory retirement scheme, it was only open

²⁵¹ Day 29/72:14-73:9 [157].

to transfer staff and Mr Ip clearly, to my knowledge, was not eligible.”²⁵²

Evidence of Prof Morris

23. In his evidence-in-chief, Prof Morris testified to the phone call on 21.4.05 in these terms:-

“... I had a phone call from Mrs Law, because the application deadline for the redundancy scheme for staff had just – had gone by three days. She wanted to know if Ip Kin Yuen and Prof YC Cheng were included in the redundancy scheme, and she went into a long explanation as to her views on Ip Kin Yuen’s research, that he didn’t do research properly, he didn’t hold a PhD, he published opinions, he didn’t base his work on evidence and why wasn’t he in the scheme and he should be. The conversation focused more on Ip Kin Yuen but there was also part of the conversation that related to YC Cheng.

I gave her my usual response, but I think I also explained to her that I didn’t think the staff either anyway were eligible for the scheme.”²⁵³

24. The reasons why they were not eligible are as follows. In the case of Prof Cheng, “he was too close to retirement age, and you needed to have at least two years of employment left to be eligible for the scheme. In the case of Ip Kin-yuen, he was “on contract terms, he wasn’t a superannuable staff member, so he wouldn’t even be eligible to be included in the scheme”.²⁵⁴

25. On Prof Cheng, Prof Morris had this further to say:-

“Q: Did Fanny Law mention anything specific about Prof YC Cheng on that occasion?

²⁵² Day 29/75:16-76:5 [158].

²⁵³ Day 5/110:1-15 [159].

²⁵⁴ Day 5/110:17-22 [160].

A: She was basically upset at him with his constant what she viewed as negative and critical comments on the educational reform which he published extensively.”²⁵⁵

26. In cross-examination, Prof Morris added an interesting piece of evidence as follows:-

“This was very shortly near the end of our voluntary departure scheme for academic staff. We had a voluntary departure scheme and a compulsory one. And I had a phone call from Mrs Law where basically she wanted to know whether Ip Kin Yuen and Cheng Yin and Cheng Yin Cheong were included in the redundancy scheme. *She argued very strongly that they should be* and she expressed her opinions about both of them.

Q: Did she say anything else about Ip Kin Yuen that helped you to understand why she made this request?

A: She took the view that Ip Kin Yuen only published opinions, he didn't do proper research, he didn't have a PhD. She obviously didn't appreciate his public commentaries. And with regard to YC Cheng she viewed his views generally as not supporting Government policy.

Q: Did she say all this in this telephone conversation, or did you just interpret what she said?

A: No, that's what she said.

Q: That's what she said? And in relation to Ip Kin Yuen then, what she was saying was more or less some of the things that she said, according to you, on the earlier occasion, on 30th October 2002; correct?

A: Yes, some of the ideas were the same.

²⁵⁵ Day 5/111:5-9 [161].

Q: And you are suggesting even though on that occasion you did not listen to her, she was making a call again to you for the same purpose?

A: Yes.

Q: Yes?

A: Yes.

Q: And she wanted his name or the names of these two individuals to be put on the voluntary departure scheme list?

A: She wanted to know if their names were in the list *and she opined that they should be*.

Q: Implying that they should be?

A: No, opined. She stated.

Q: She stated, expressly?

A: Yes [italics added].”²⁵⁶

27. The contents of the phone call, as testified by Prof Morris, is highly implausible for the following reasons:-

- (1) It is *highly unlikely* that Mrs Law would have “opined that [Ip and Prof Cheng] should be” on the VDS list or “argued strongly that they should be” since:-
 - (a) Mrs Law was aware that this was a *voluntary* scheme. It was useless to “argue” that an individual should be included in this scheme if he does not *volunteer* to do so.
 - (b) Mrs Law had read the scheme proposal and knew that at least Mr Ip was not eligible, as she believed (rightly) that he was on contract terms with the HKIED. Again, there

²⁵⁶ Day 9/97:10-98:22 [162].

was no point “arguing” that someone should be in the scheme when he was simply *not eligible*.

(c) Mrs Law also knew that the deadline for the VDS had expired. To her knowledge, the VDS “had a very firm deadline, which is 18th April 2005”.²⁵⁷ That was why she called up Prof Morris on 21.4.05, in order to find out the number of applicants on the VDS/CRS.²⁵⁸

(2) Prof Morris’ evidence is also inconsistent with that given by Prof Luk on the same incident. Prof Luk said:-

“One day he [Prof Morris] told me there might have been a few more with Kat Ma also, I’m not sure, saying that he got a phone call from Fanny asking if those two colleagues’ names were on the VDS/CRS list, and *Prof Morris told her the facts, that they were not, and she demanded to know why not and he said they are not eligible* [italics added].”²⁵⁹

If, as Prof Luk testified, there was a discussion between Prof Morris and Mrs Law as to why Mr Ip and Prof Cheng were not eligible for the VDS, it would *not* have been plausible that Mrs Law would have “argued strongly that they should be” included in the scheme.

(3) The reasons allegedly given for Mrs Law wanting to include Mr Ip on the VDS list were the same reasons as she allegedly gave in the telephone conversation with Prof Morris on 30.10.02, namely, he did not do any research, had not got a PhD, etc.²⁶⁰ As Mrs Law explained: “I would be insane to really continuously ask for dismissal of staff again and then made the same request and on an occasion which was clearly impossible”²⁶¹ since, to her knowledge (and even according to

²⁵⁷ Day 31/69:7-8 [163].

²⁵⁸ See §20 above.

²⁵⁹ Day 12/151:22-152:2 [164].

²⁶⁰ Cf Day 5/101:17-20 [165].

²⁶¹ See §22 above.

Prof Luk), Mrs Law would have known that it was *impossible* to put Mr Ip on the VDS.

- (4) The background and documentary evidence relating to this episode is clear. Both the UGC (Keeson Lee) and the EMB (Mrs Law) had an interest in knowing the number of applicants for the redundancy scheme so that the Government could prepare the funding for the pension to be paid to the eligible staff and the matter was expected to have to be dealt with on an urgent basis. Yet, Prof Morris in all of his accounts of what was discussed in this episode failed completely to mention this matter, giving the unmistakable impression to the Commission that the purpose of Mrs Law's call was to ask for Mr Ip and Prof Cheng to be included in the VDS.
28. Again, since there is a conflict between the evidence of Prof Morris and that of Mrs Law, the Commission is entitled and, indeed, bound to take into account that manner in which Prof Morris had given his evidence in the first two episodes under the 2nd Allegation. Taking that into account, and considering the **quality** of evidence given by him as analysed above, the Commission cannot be satisfied that Prof Morris' evidence is correct to the requisite standard of proof. It is submitted that Mrs Law's evidence is inherently more probable and to be preferred.

Executive Summary

- (1) *Both the UGC (Keeson Lee) and the EMB (Mrs Law) had an interest in knowing the number of applicants for the redundancy scheme so that the Government could prepare the funding for the pension to be paid to the eligible ex-civil service staff and the matter was expected to have to be dealt with on an urgent basis.*
- (2) *Mrs Law called Prof Morris on 21.4.05 for such purpose and not in order to "argue" that Ip Kin-yuen or Prof Cheng Yin-cheong should be included in the VDS.*

- (3) *Prof Morris failed to mention the true purpose of the call by Mrs Law on 21.5.05 in his evidence on this matter.*
- (4) *It is highly unlikely that Mrs Law would have “opined that [Ip and Prof Cheng] should be” on the VDS list or “argued strongly that they should be” since:-*
- (a) *Mrs Law was aware that this was a voluntary scheme;*
 - (b) *Mrs Law had read the scheme proposal and knew that at least Mr Ip was not eligible, as she believed (rightly) that he was on contract terms with the HKIED; and*
 - (c) *Mrs Law also knew that the deadline for the VDS had expired and that this was “a very firm deadline, which is 18th April 2005”.*
- (5) *Prof Morris’ evidence is inconsistent with the evidence given by Prof Luk on this incident.*
- (6) *According to Prof Morris’ evidence, Mrs Law would have called him up several times requesting for staff to be dismissed and Prof Morris had repeatedly turned her down and did nothing in response to the alleged requests. Mrs Law captured the situation succinctly when she said: “I would be insane to really continuously ask for dismissal of staff again and then made the same request and on an occasion which was clearly impossible”.*
- (7) *The Commission is entitled and, indeed, bound to take into account the manner in which Prof Morris had given his evidence in the first two episodes under the 2nd Allegation. Taking that into account, and considering the **quality** of evidence given by him as analysed above, the Commission cannot be satisfied that Prof Morris’ evidence is correct to the requisite standard of proof. Mrs Law’s evidence is inherently more probable and to be preferred.*

Chapter 8

2nd Allegation – Conclusions

1. The Terms of Reference relating to the 2nd Allegation are as follows:-

“In the past few years, whenever some members of the Institute published articles in local newspapers which criticized the education reform or the education policy of the Government and its implementation, shortly afterwards senior Government Official(s) repeatedly called to request Prof Morris to dismiss such members of the Institute.”

2. There are four incidents falling within these terms which have been particularized. The Commission has extremely detailed evidence specifically relating to each of these episodes and will have no difficulty coming to a determination on the 2nd Allegation on the basis of such evidence. Based on such evidence, we respectfully submit that the following *findings* are open to the Commission.

1st Particular – Telephone Call on 30.10.02

3. This is the only occasion where it is alleged that there was a call “to request Prof Morris to dismiss” the staff members in question, namely, Dr Lai Kwok-chan and Ip Kin-yuen. It is *not* alleged in the evidence that the word “dismiss”, “fire” or “sack” was used in any of the other three episodes.
4. This was *not* an occasion where “some members of the Institute published articles in local newspapers which criticized the education reform or the education policy of the Government and its implementation”. According to Profs Morris and Luk, the reference to the publishing of articles should include the holding of a seminar or conference. It is doubtful whether it is open to the Commission to expand the scope of the Terms of Reference in this manner. However, even if it could be done, this was *not* an occasion where Dr Lai or Mr Ip “criticized the education reform or the education policy of the Government and its implementation”.

5. So far as Dr Lai is concerned, the evidence is clear and unequivocal. Dr Lai was *not* a speaker and expressed no views at the seminar.
6. As to Mr Ip, a summary of views has been produced before the Commission. Looking at such summary, there does not appear to be any criticism of the education reform or the education policy of the Government and its implementation either. Moreover, as at 30.10.02, the Government did *not* have any policy *not* to implement small class teaching. What it had decided is that there should be a pilot study to assess the effectiveness of small class teaching and to determine whether this should *become* a policy in Hong Kong and, if so, in what form (eg how small should the class be) given the financial constraints at the material time.
7. However, whatever were the views expressed by Mr Ip, the Commission will have no difficulty in reaching a determination on this incident for the simple reason that Mrs Law was *not* aware that Mr Ip was a speaker at the seminar, as her source of information at the time of the telephone call was the Sing Tao Daily article which made no mention of Mr Ip. She did not recall Prof Morris mentioning Ip or Lai in the telephone conversation on 30.10.02.²⁶² On his part, Prof Morris could not remember exactly what he said to her about the seminar.²⁶³
8. In any event, the evidence is clear that Mrs Law had *no knowledge* of what views were expressed by Mr Ip at the time of the phone call. Nor was she criticizing the views of anyone (let alone anyone from the HKIED) expressed at the seminar. Her concern was *not* what Dr Lai or Mr Ip did or said at the seminar, but as to the representation on the panel which included the PTU but not the EMB. The evidence of Mrs Law and Mr Ip, and the letter of Prof Morris dated 4.11.02, show this beyond doubt.
9. There is, therefore, more than sufficient evidence for the Commission to arrive at these, or other material findings, on this episode. The question then arises as to whether, in the light of this, it is necessary

²⁶² Day 29/16:1-5 [166].

²⁶³ Day 6/66:9-17 [167].

for the Commission to make specific findings relating to the Magdalena Mok phone call, since this also has to do with Mr Ip.

10. As a separate incident in its own right, the Magdalena Mok phone call falls “*outside* the terms of reference of the Commission” within the meaning of section 3(c) of the Commissions of Inquiry Ordinance. However, as a piece of evidence going to the 2nd Allegation *within* the Terms of References, the question would then be: how *probative* is it as evidence of the 30.10.02 episode. We submit that there is *no probative value* at all for the following reasons:-

- (1) The Mok phone call took place long after the call to Prof Morris on 30.10.02. As is plain from the evidence, the relationship between Mrs Law and Mr Ip was very friendly at the time of the latter episode.
- (2) There is nothing *similar* between the two incidents. The identity and views of Mr Ip were not only unknown to Mrs Law at the earlier episode, they were *not* relevant matters so far as the call was concerned.
- (3) The Commission already has detailed evidence, backed up by in depth examination and cross-examination, on the 30.10.02 telephone call. Having regard to the potential findings set out in paragraphs 3 to 8 above, the Commission will be unlikely to derive any or any further assistance from the evidence relating to the Mok phone call.

11. In the unlikely event that the Commission may find *some* relevance in the Mok incident, we propose the following approach for the Commission’s consideration:-

- (1) That incident is unique in that it followed from an earlier conversation with Mr Ip himself, which did concern some articles written by Mr Ip. However, this conversation gave rise to a series of other articles, starting with “Shirking Responsibilities” (which Mrs Law had read prior to the Mok phone call). Mrs Law’s purpose in calling Prof Mok was to ventilate her frustration at the fact that Mr Ip saw fit to publish

a private conversation which breached the confidence between them.

- (2) It is important to note that Mrs Law did *not* call Prof Mok immediately following the publication of the earlier series of articles but had called Mr Ip instead. This goes a long way to show that Mrs Law’s purpose was *not* to “order” Prof Mok to “fire” Mr Ip *because of* the publication of those articles.
- (3) As Prof Mok herself testified, Mr Ip’s articles were extremely mild and, judging from their contents, they were more concerned with teachers’ workload than of the education reform itself. Given Mrs Law’s very friendly relationship with Mr Ip immediately prior to the publication of those articles, it would stretch the imagination to hold that Mrs Law would *intend* (contrary to her evidence) to ask Prof Mok to “fire” him or had *in all seriousness* “ordered” Prof Mok to do so.
- (4) There is a large measure of common ground between the evidence of Prof Mok and Mrs Law:-
 - (a) They were classmates from Form 1 to Form 7 at the St Mary’s Canossian College.²⁶⁴
 - (b) The classmates were in close contact with each other until now. On a personal level, Prof Mok was quite friendly with her.²⁶⁵
 - (c) Prior to the phone call, Mrs Law had called up Prof Mok before from time to time to discuss academic matters.²⁶⁶
 - (d) During the phone call in question, Mrs Law was angry and frustrated.²⁶⁷
 - (e) Mrs Law mentioned to Prof Mok her earlier conversation with Ip Kin-yuen, which was related to an earlier series

²⁶⁴ Day 17/140:13-20 [168].

²⁶⁵ Day 17/140:21-141:1 [169].

²⁶⁶ Day 17/141:7-12 [170].

²⁶⁷ Day 30/135:1-24 [171].

of articles which portrayed teachers as unduly stressed and overworked, putting all the blame on EMB policies.²⁶⁸

- (f) Mrs Law complained that Ip’s articles were not based on evidence and the reference to “loose talk” was used.²⁶⁹
 - (g) She complained that Ip Kin-yuen had revealed a private telephone conversation in his column.²⁷⁰
 - (h) Mrs Law asked Prof Mok to do something. Prof Mok said Mrs Law asked her to fire Ip or have him fired. Mrs Law had no recollection of saying that.²⁷¹
 - (i) Prof Mok disassociated herself by saying Ip was not in the same department and that she was not his supervisor.²⁷²
 - (j) Mrs Law was trying to have a shoulder to cry on, saying to Prof Mok that Ip had been publishing all these series articles and the last article was one where he even revealed a private conversation and that gave rise to Mrs Law being upset and angry and Mrs Law asked her what she could do.²⁷³
 - (k) One suggestion that she had was that Mrs Law could try to publish her own articles in the newspaper.²⁷⁴
- (5) Prof Mok’s evidence is that as soon as she picked up the phone, Mrs Law “immediately ask[ed] me to fire Mr Ip Kin Yuen”, using the word in Cantonese “tsau”.²⁷⁵ Mrs Law does not believe that she used this word. She said that she would not

²⁶⁸ Day 30/138:24-139:5 [172]; Law 4th §80.

²⁶⁹ Day 30/139:5-14 [173].

²⁷⁰ Day 30/139:15-19 [174].

²⁷¹ Day 30/139:20-140:7 [175].

²⁷² Day 30/140:8-14 [176].

²⁷³ Day 30/142:13-21 [177].

²⁷⁴ Day 30/142:22-24 [178].

²⁷⁵ Day 17/141:12-15 [179].

and did not say the word “tsau” or the words “at least he can’t be promoted” because Prof Mok was not the supervisor of Ip.²⁷⁶

- (6) If the above had been the entirety of the evidence about this episode, then the word “tsau”, or some other word of agitation, even if used, would have been more likely to be used to vent one’s anger, *particularly when it is alleged that this was used “immediately” upon the picking up of the phone*. It is not unlike someone saying, in anger and frustration, after another person had done something terrible to him: “I want to kill this guy” without meaning that he would commit murder.
- (7) What Prof Mok added in her evidence in support of her allegation that the suggestion of “tsau” was an “order” from Mrs Law and that this was said *in all seriousness* is this:-

“... She asked me to do something that I could not have possibly accomplished and this is a very serious matter.

In response to that, she asked me, ‘If we want to dismiss someone, what should we do? Why can’t I dismiss him?’

... So I explained to her that at universities, we have due procedures and if we want to dismiss someone, there is usually a committee formed and she then asked me who has the power to dismiss him.

So I said that usually it is Prof Paul Morris, the president or his delegate and they would be informed of a committee, like disciplinary committee if the person has committed some wrong deeds and then probably the department head would need to write a report and then she asked me who is the department head of Mr Ip Kin Yuen. So I had to look up the phone book and I told her, but I cannot remember who, what name was it.”²⁷⁷

²⁷⁶ Day 30/144:18-147:10 [180].

²⁷⁷ Day 17/144:16-145:7 [181].

(8) This part of the evidence is likely to be an embellishment on the part of Prof Mok for the following reasons:-

(a) In her written submission to the Commission, she stated *expressly* the following:-

“As the events happened a while ago, *most of the details* were no longer available or could not be recalled. Nevertheless, part of the conversation *could still be remembered* [italics added]”.

She then proceeded to set out what “could still be remembered” with very specific details, including verbatim words being used in the Cantonese original.²⁷⁸

(b) As shown by the details which she set out in writing both in relation to the phone call as well as the separate episode relating to the RGC proposal,²⁷⁹ it is plain that she intended to leave out *no details* from her written submission which she could still remember.

(c) This is confirmed by the following evidence given by Prof Mok in cross-examination. After she was referred to the two boxes which she ticked at W1/1/2:-

“Q: You ticked both boxes?”

A: Yes.

Q: The second statement is correct, isn’t it, that according to you, the details of the first-hand factual information or experience is set out in the enclosed document?

A: Exactly.

Q: Is that a true statement?

²⁷⁸ W1/1/3.

²⁷⁹ E1/1/2-3.

A: That is a true statement. Remember, I take an oath to say that I will tell the truth and nothing but the truth.

Q: Yes. Can you turn over to the page to page 3. At the top of this page: ‘Without prejudice, the following provides a list of events on EMB’s request to dismiss Ip Kin Yuen on the basis of his newspaper articles.

A: Yes.

Q: ‘As the events happened a while ago, most of the details were no longer available or could not be recalled. Nevertheless, part of the conversation could still be remembered.’

A: Yes.

Q: Is that a correct statement?

A: That is a correct statement.

Q: And the part of the conversation that could still be remembered is set out in the table below?

A: Yes [emphasis added]’.

In short, she was saying that she was leaving no details out, at least not the *important* details.

- (d) Two implications arise from this evidence:-
- (i) She left out any reference to the main purpose of the phone call, which was that Mrs Law was frustrated and angry about the fact that Ip Kin-yuen had published their private conversation in breach of the confidence between them.
 - (ii) She did *not* include the very important detail set out in sub-paragraph (7) above. This is the detail

which, if true, would lend support to her evidence that the word “tsau” was said *in all seriousness*.

(e) On (i) above, the following exchange is relevant:-

“Q: Do you agree that if you had written that fact which I just referred to, it would have shed a different light on the telephone conversation?”

A: Mr Mok, Mr Mok, Mr Mok, I think I’m not coming here to accuse someone and I’m not here to be accused by someone. I’m here so that we can, as Hong Kong citizens, think of ways that we can come to some mutual understanding and then bring good to Hong Kong education.

Chairman: Prof Mok, I’m sure that’s your purpose, but counsel is here to put to you that is something you might have forgotten to put in writing.

Mr Mok: That’s right.

Chairman: One of the things that’s being suggested to you that you have omitted is the reference to Mrs Law being angry because Mr Ip had published a private conversation in a newspaper. That is what is being suggested to you.

A: Yes, Mr Chairman.

Chairman: The suggestion is if you had put that in, the issue may have a slightly different perspective. That’s what’s being suggested.

A: Thank you, Mr Chairman, for explaining that. ***But I can only put down what I remember best and I remember best*** is firstly, Mrs Law said that Mr Ip had –

Q: You said that already.

A: Yes. Thank you.

Mr Mok: That detail that the chairman kindly reminded you of was an important detail of that telephone conversation, wasn't it? Was it an important detail of that telephone conversation?

A: What is the question?

Q: The question is: the detail that Mr Chairman just explained to you, that is an important detail of that telephone conversation, is it?

A: As I said –

Q: No, just please answer 'yes' or 'no'. Do you consider that to be an important detail of that telephone conversation? Please.

A: The detail of the telephone conversation is that, firstly, Mrs Law said that Mr Ip –

Q: Prof Mok, we don't want to waste time here.

A: No, I don't want to waste time.

Q: It's a simple question. You can just say 'yes' or 'no'. You may not consider it important, therefore, you didn't put it down, you can say no. So that's the question. 'Yes' or 'no', please.

A: I did say in my –

Q: No, please, Prof Mok. The answer is very simple. Either 'yes' or 'no' or you have no idea whatsoever.

A: What is the detail, please?

Chairman: That she was angry about Ip having published a private conversation that he had with Mrs Law.

A: [Then the witness began to refer to what she said in oral evidence rather than what she stated in the written submission to the Commission.]

Q: So I'm just asking you, please, just answer two simple questions. The first question which you have not answered is: do you consider that detail to be an important one?

A: That detail that Mrs law said that this is conversation between friends.

Q: More than that. And that he turned it into an article and published it in the newspaper and she repeatedly said she was very angry about that.

That's the detail that I'm referring to.

A: Yes.

Q: Do you consider that to be an important detail of that telephone call?

A: That is one detail.

Q: No, I'm not asking you whether that is a detail or not.

A: Sorry.

Q: Is that an important detail? I mean, how many times do I need to ask that question?

A: Whether it is important, I think there are many important details.

Q: I know that there are many important details, like firing is also an important one, but can you focus just just on this one? You are capable, right, on focusing on one point?

A: Relatively, this is not as important as the word 'fire'.

Q: So the word 'fire' is important, but this detail is not important?

Chairman: Not as important.

Mr Mok: Not as important?

A: Not as important as the word 'fire'.

Q: Can I put this to you.

A: Just like the wording, 'He's not a professor', that I said. That is also a detail that I didn't put in there.

Q: The meaning of the word 'fire' takes after the context of the conversation; correct?

A: Yes.

Q: Just like the word 'kill' or 'chop up someone' takes its meaning in the context of the telephone conversation?

A: Yes.

Q: So it's the context that confers meaning on the word; do you agree with that?

A: I agree with that and I hope I have the memory to record it verbatim, but I couldn't, because it happened a long time ago."²⁸⁰

- (f) From the above exchange, it is clear that Prof Mok was extremely *evasive* and *reluctant* to give a straight answer to the question whether she had omitted a very important detail in her written submission to the Commission, ie the purpose of the phone call being to complain to her about Ip publishing a private conversation in the newspaper. Instead, she chose *only* to tell the Commission in the table at W1/1/3 that "Law requested Mok to dismiss Ip Kin Yuen "*because Ip had written a number of newspaper articles against EMB initiatives*". While this statement is factual *not* incorrect, it emasculates the phone conversation to such an extent as to have distorted it completely, *concealing the real purpose of it*.
- (g) The second implication arising from Prof Mok's evidence (namely, that "***the part of the conversation that could still be remembered is set out in the table***" at W1/1/3) is that such table did *not* include the very important detail set out in sub-paragraph (7) above. On this, the following exchange is significant:-

"Q: This thing which I just read to you, that also is a very important detail of that telephone conversation, wouldn't you say?

A: Not as important as the word 'tasu'.

Q: This is more important than the word 'tasu', because the word 'tasu' or 'fire' *by itself* is ambiguous.

Chairman: I don't find that ambiguous at all.

Mr Mok: Just like the word 'kill' or 'doing something to someone in anger'. That's why my learned friend Mr

²⁸⁰ Day 18/29:13-31:13; 33:8-35:2 [182].

Yu asked the question, because the word takes its meaning from its context.

Chairman: Yes.

Mr Mok: You are now providing a very important detail in the context because if what you have said is true, in other words, if what you have said was indeed said by Mrs Law, that would make the word 'tsau' unambiguous to mean that she really intended for Mr Ip to be dismissed; do you agree?

A: I see what you mean, but when I received that telephone conversation, she was very serious in wanting to 'tsau' someone, to fire someone.

Q: But this detail lends credibility to that?

A: We did talk about the procedures and she asked me about the procedures and then I told her that there is due process and things like that.

Q: When did you remember this detail?

A: All the time.

Q: All the time?

A: Yes, all the time and more and more recalled as I tried to remember, because I tried to put it off me. It is something that I don't want to remember, you see. It is something that is so traumatic.

Q: If it was something that you remember all along, why did you not put it in your written statement on page 3?

A: A good question. I put all the important points, the points that I considered so important in the statement.

Q: But you didn't put this one?

A: This one, as I said, is not as important. How you fire someone, it doesn't matter. If one is successful, that person is fired. So it is talking about the process, but I'm talking about a request in my submission to fire someone. That is the most important element to me.

Q: Professor, may I remind you that in the second complaint, concerning the UGC proposal, you set out in great detail every step of the process; right?

A: Yes.

Q: In relation to this episode, you say in your statement that 'most of the details were no longer available and could not be [remembered] or recalled.'

A: That's right.

Q: '... part of the conversation could still be remembered.'

A: Some of it.

Q: And you said that the part is the part that is set out in this statement.

A: Yes.

Q: Yet, you did not set out what I consider to be a very important part.

A: Mr Mok, you asked me that question of Saturday. And you ask me again, so thank you for giving me a second chance to elaborate.

Q: No, I'm sorry, I'm not asking, I'm just asking you this question. I don't want you to elaborate. The question I asked you is why did you not put this very

important detail when you could have remembered this detail at the time of preparation of your statement?

A: Mr Mok, firstly, my first submission, that is concerning the telephone conversation, is one page in length and my submission about the UGC allegation is of two pages in length. And the first one, I do not have any paper document other than an article that I considered to be most likely to be connected. Whereas for the second one, I had a series of emails and all the pages were email correspondences that I could lay my hands on and that's why I just submitted whatever I could find. If we had email correspondences between Mrs Law and I for the first allegation – sorry, for the first submission, then I would have included those as well.

Q: Professor, I don't think you have got my point. My point is that precisely for that reason, that there is no contemporaneous document, it was all the more important that you would have put down every important detail you have tried to remember. There are certain words that you put in Chinese in order to show the verbatim nature; right? So you had taken great care to put in every important fact which was relevant to this telephone conversation, did you not?

A: I try to remember as much as I can, but as I said, firstly, it happened a long time ago –

Q: Sorry, Prof –

A: Secondly – yes?

Q: You don't need to explain that because you said in evidence you did remember this detail at the time.

A: I did remember the detail. Whatever I wrote down, I did remember.”²⁸¹

²⁸¹ Day 18/49:11-53:6 [183].

- (h) It is plain from the above exchange that the witness was again being *evasive* and not wishing to admit that, if the discussion on disciplinary procedure was raised in the conversation, and she *did* (as she said) remember it at the time of the written submission to the Commission, she would have included it in the table at W1/1/1. But she did not.
- (9) Moreover, Prof Mok admitted that Mr Li Wing On could very well be one of heads of the department of policy and administration to which Mr Ip belonged.²⁸² Mrs Law's evidence was that she "knew very well that Ip Kin Yuen's supervisor is Prof Lee Wing On. So [she] could not have asked her to look up the phone book".²⁸³ This is confirmed by the witness statement of Prof Lee Wing-on at W2/18/59 §§3-6. The matter is now put to rest by Prof Mok's 4th Witness Statement, where it is now clear that Lee Wing On was the Head of the Department of Education Policy and Administration from 16.7.03 to 29.6.05.²⁸⁴ Prof Mok now attempts to confuse matters by suggesting that various other people had acted for Lee Wing On for short duration during this period.²⁸⁵ However, the point is: if Prof Mok was right that Mrs Law had asked her to look up the HKIED Directory to identify Mr Ip's Head of Department, she would not have expected Prof Mok to tell her from the Directory who was acting for Lee Wing On at that time! Given Mrs Law's knowledge of who Mr Ip's Head of Department was, it is highly unlikely that she would (as alleged by Prof Mok) have asked Prof Mok to look up the phone book to identify the head of department for her. In any event, this piece of evidence is bizarre since, according Prof Mok, she was "scared" during the telephone conversation not for herself but only for Mr Ip ("who is at the start of their career"),²⁸⁶ she should have taken active steps to assist Mrs Law to invoke the very disciplinary procedure she allegedly

²⁸² Day 18/48:15-49:5 [184].

²⁸³ Day 30/4:24-5:8 [185].

²⁸⁴ W2/309 §3.

²⁸⁵ Ibid §§4-7.

²⁸⁶ Day 17/154:7-16 [186].

explained to Mrs Law by looking up the phone directory for her, when she believed at the same time that she might actually contact the department head.²⁸⁷

- (10) It is submitted that this part of Prof Mok’s evidence was an embellishment, being an after-thought which she came up with after filing her written submission in order to lend credibility to her allegation that the word “tsau”, or some expression used in frustration by Mrs Law, was intended *in all seriousness* to be carried into effect.
- (11) Prof Mok’s motive for doing that may be gleaned from the other complaint she made to the Commission concerning the RGC Proposal. There, she was making a mountain out of a molehill when she was informed early on that it was Mrs Law who was making that request for her proposal through the UGC, and that it was in connection with Prof Mok’s application in 2005 for very substantial funding for her centre (CARD) to the tune of \$35 million.²⁸⁸ She demanded that the EMB, which she knew was requesting to see her proposal should write to her directly. This was done by an email from KC Tam of EMB to her dated 7.3.05 following precisely what she asked for, and explaining “We do need evidence to support the efficacy of the project and to justify additional for school-based support as a follow-up to the RGC project”.²⁸⁹ This email was dated only 2 days after the last email (of 5.3.05)²⁹⁰ which she disclosed by way of written submission to the Commission, and it went to the same email account (mmcmok@ied.edu.hk)²⁹¹ which shows on the other email exchanges produced by her.²⁹² Yet, she had chosen *not* to disclose the 7.3.05 email and justified that by saying that she had changed her computer.²⁹³

²⁸⁷ Day 18/54:19-55:4 [187].

²⁸⁸ Day 17/157:15-22 [188].

²⁸⁹ EMB 13/971-2.

²⁹⁰ E2/14/32.

²⁹¹ EMB 13/971-2.

²⁹² See eg E2/13/31.

²⁹³ Day 18/42:15-43:14 [189].

(12) Prof Mok even accepted, in evidence, that the matter was resolved after she had spoken to Michael Stone about it.²⁹⁴ Yet, she used this episode to personally attack Mrs Law for infringing her “academic freedom” in the context of the 2nd Allegation. She said:-

“Q: I see, so you are using this episode as evidence to show that Mrs Law has done something to infringe your academic freedom. Is that the purpose?”

A: Definitely there is some element of infringement of academic freedom. I would say so.”²⁹⁵

(13) Prof Mok was wholly unjustified in bringing forward this episode against Mrs Law in the context of the 2nd Allegation. For whatever reason, she was making a personal attack on Mrs Law. Such motive is corroborated by the fact that she had prepared her written submission on the phone call in a selected manner, and has embellished her evidence in the way described above.

12. It is submitted that this episode concerning Magdalena Mok is a complex matter, which requires close analysis of the context and evidence. Unless the Commission feels that the *probative value* is such that it is *necessary* to make a specific finding in order to come to a determination on the particularized incidents under the 2nd Allegation, it is submitted that *no* such finding is called for.

13. In the event that the Commission feels that a specific finding is called for, it is submitted that Magdalena Mok, for her own reasons, had shown an intention to mount a personal attack on Mrs Law and that her evidence must therefore be viewed with extreme caution. Moreover, she has shown herself to be a highly *sensitive* and *suspicious* person, as demonstrated by her evidence concerning the RGC proposal allegation.²⁹⁶ In all the circumstances, the most *likely* interpretation of this episode is that, no matter what word had been used by Mrs Law (“tsau”) or some other expression, Magdalena Mok

²⁹⁴ Day 18/45:21-24 [190].

²⁹⁵ Day 17/179:6-10 [191].

²⁹⁶ Day 17/156:24-181:14 [192].

has represented this in the most negative light as a personal affront to Mrs Law. However, the inherent probabilities, and the evidence is such that Mrs Law would have *not* used this word intending it as an “order” to Prof Mok (who she regarded as a friend) or intending that such an “order” be carried out.

2nd Particular – 19 November 2004

14. Prof Morris does *not* allege that Mrs Law asked for Dr Wong Ping-man to be “dismissed”, or even used words like “why do you employ him”. He is alleging that this was an *implicit* reference to “dismissal”, but the whole context of the alleged conversation and the quality of his evidence are such that Prof Morris’ suggestion cannot really be taken seriously.
15. There is no alleged linkage to the publication of any newspaper articles.
16. Indeed, no reason has been given for why Mrs Law should have contemplated sacking this person.
17. Mrs Law’s evidence is that she could not even recognize this person, and would not have mentioned him to Prof Morris in a negative way, particularly at the happy occasion of the Graduation Ceremony on 19.11.04.
18. This therefore is an episode which does not fit into the 2nd Allegation at all.
19. The Magdalena Mok incident would not have been probative here in any way.

3rd Particular – November 2004

20. Prof Morris alleges that, in this instance, Mrs Law used the words “we shouldn’t be employing him at the IEd”. Even if this evidence was accepted (which should not be), it was *not* a request to “fire” Prof Cheng Yin-cheong.

21. On this episode, the Commission also has the direct evidence of Mrs Law as to her interaction with Prof Morris. On the primary facts, the matter would turn on the credibility of the two witnesses.
22. On this issue, some guidance may be obtained from the case of *Yiu Ming Investment Ltd v Peng Ru Chuan Richard*.²⁹⁷ The case concerned a defamation claim brought by Yu Ming against Mr Richard Peng (a senior employee with the Stock Exchange of Hong Kong Limited) over words said at a meeting in relation to the possible listing of a company. Chung J laid down the test for assessing witnesses credibility as follows:-

“There are two objective tests for assessing a witness’s credibility regarding a matter to which he has testified:

- (a) whether that part of his testimony is inherently plausible or implausible;
- (b) whether that part of his testimony is, in a material way, contradicted by other evidence which is undisputed or indisputable (an example often given of such evidence is contemporaneous documents).

Further, *where it is shown that a witness has been discredited over one or more matters to which he has testified (using the above tests), this fact is relevant to the assessment of his overall credibility. Likewise, regard may be had to a witness’s motive for deliberately not giving truthful testimony. For example, telling the truth may prejudice his interest, or a just determination of the litigation may affect his interest [italics added].*”²⁹⁸

23. In respect of the 2nd Allegation, it is submitted that Profs Morris and Luk have given evidence concerning Dr Lai Kwok-chan and Ip Kin-

²⁹⁷ HCA 814/2002 (5.5.05: Chung J), unreported.

²⁹⁸ *Ibid.*, §13 (per Chung J).

yuen's role in the 30.10.02 episode which must be rejected. Parts of that evidence constitute an "embellishment" (as put to Prof Luk by Mr Yu SC) or "fabrication" (as stated by Mrs Law). Telling the truth on that episode would seriously affect the integrity of the 2nd Allegation as framed by Prof Luk and reflected in the Terms of Reference, and would have a knock-on effect on the other episode. The two Professors therefore had every interest in making good their allegation (wholly implausible though it is) that Dr Lai and Ip were the subject to Mrs Law's request for "firing".

24. In our respectful submission, if these witnesses are discredited in respect of the 1st Particular and/or 2nd Particular, because these two matters are so central to the 2nd Allegation, the Commission in assessing their credibility in respect of the 3rd Particular must have due regard to such finding and view the Professors' evidence with utmost caution.
25. As against this, Mrs Law's version of her dealings with Prof Morris is clear and straight-forward, and is inherently plausible. On the contrary, it would be entirely implausible, knowing the type of disciplinary proceedings involved in "firing" an academic staff member, the less than friendly relationship she had with Prof Morris and the alleged repeated requests for "firing" which yielded no result or any action from Prof Morris, that Mrs Law would have continued to press him to dismiss more staff. As Mrs Law himself said, she would have to be "insane" to continue doing that.
26. In so far as necessary, the Commission will bear in mind the **strength and quality** of the evidence, and the "stricter" standard of proof, which is called for if a finding was to be made that Mrs Law did request Prof Morris to "fire" Prof Cheng Yin-cheong. It is submitted that, in any event, such standard has not been met.
27. The Magdalena Mok incident is wholly irrelevant to this episode. That incident was very *context-specific*. It was about a **different person** (Ip Kin-yuen), a **different event** (the disclosure of private conversation), a **different time** (2003) and a **wholly different relationship** (Magdalena Mok being a long-time friend and, to Mrs Law's knowledge, not being Mr Ip's superior or having any authority

over him). The incident therefore would have *no probative value* so far as the 3rd Particular of the 2nd Allegation is concerned.

4th Particular – 21.4.05

28. In this episode, Prof Morris alleged that Mrs Law “wanted to know if Ip Kin Yuen and Prof YC Cheng were included in the redundancy scheme”. This was his evidence-in-chief.²⁹⁹ On this evidence alone, there was nothing remotely about Mrs Law wanting these persons to be “fired”. It was, allegedly, a mere *question*.
29. The embellishment came in during the cross-examination, namely: “*She argued very strongly that they should be*” included in VDS.³⁰⁰ The reason why Prof Morris’ allegation is highly implausible is already explained in details in the preceding Chapter.
30. Here, the Commission is very much aided by the context to this episode, and the documentary evidence concerning the VDS/CRS. More particularly, the Commission will have no difficulty finding that Mrs Law in fact knew about the “target population” in the scheme proposal when she was asked to approve it and, given her history and relationship with Ip Kin-yuen, she knew that he was on contract terms and therefore not eligible for the VDS. He was also not eligible for the CRS, not being one of the transferred staff from the former colleges of education.
31. If the Commission sees fit to make this finding, it follows that it is *highly unlikely* that Mrs Law would (as alleged by Prof Morris) have asked him whether Ip Kin-yuen and Cheng Yin-cheong were included in the VDS and, even *less likely*, have “argued very strongly that they should be” so included. Between the two staff members, Prof Morris’ evidence is that the conversation “focused more on Ip Kin Yuen but there was also part of the conversation that related to YC Cheng”.³⁰¹ So, if he is discredited on the allegation concerning Ip, his evidence can hardly stand alone with regard to Prof Cheng.

²⁹⁹ Day 5/110:1-15 [193].

³⁰⁰ Day 9/97:10-98:22 [194].

³⁰¹ Day 5/110:1-15 [195].

32. As with the other Particulars, the Commission here has more than sufficient evidence (both oral and documentary) to come to a correct determination on this episode. Since the evidence is particularly cogent as regards Ip Kin-yuen, the Commission will have no need to resort to any finding regarding the Magdalena Mok incident which related to a completely different context and has *no probative value* in respect of this episode.

Executive Summary

- (1) *The Commission has extremely detailed evidence specifically relating to each of these episodes and will have no difficulty coming to a determination on the 2nd Allegation on the basis of such evidence.*
- (2) *The Magdalena Mok incident is outside the Terms of Reference of this Commission. It is also a complex matter, which requires close analysis of the context and evidence. Unless the Commission feels that the **probative value** is such that it is necessary to make a specific finding in order to come to a determination on the particularized incidents under the 2nd Allegation, it is submitted that no such finding is called for.*
- (3) *In the event that the Commission feels that a specific finding is called for, it is submitted that Magdalena Mok, for her own reasons, had shown an intention to mount a personal attack on Mrs Law and that her evidence must therefore be viewed with extreme caution. Moreover, she has shown herself to be a sensitive and suspicious person, as demonstrated by her evidence concerning the RGC proposal allegation.*
- (4) *In all the circumstances, the most likely interpretation of this incident is that, no matter what word had been used by Mrs Law (“tsau”) or some other expression, Magdalena Mok has represented this in the most negative light as a personal affront to Mrs Law. However, the inherent probabilities, and the evidence is such that Mrs Law would not have used this word intending it as an “order” to Prof Mok (who she regarded as a friend) or intending that such an “order” be carried out.*

- (5) *In respect of the 1st two Particulars of the 2nd Allegation, the Commission will not have difficulty in rejecting Prof Morris' version that the episode had anything to do with the "firing" of staff. The Magdalena Mok incident will be of no assistance here.*
- (6) *As to the 3rd Particular, the Commission may be guided by the principle for assessing credibility set out in Yiu Ming Investment Ltd v Peng Ru Chuan Richard.*
- (7) *The Magdalena Mok incident is wholly irrelevant to this episode. That incident was very context-specific. It was about a **different person** (Ip Kin-yuen), a **different event** (the disclosure of private conversation), a **different time** (2003) and a **wholly different relationship** (Magdalena Mok being a long-time friend and, to Mrs Law's knowledge, not being Mr Ip's superior or having any authority over him). The incident therefore would have no probative value so far as the 3rd Particular of the 2nd Allegation is concerned.*
- (8) *On the 4th Particular, the Commission is very much aided by the context to this episode, and the documentary evidence concerning the VDS/CRS. More particularly, the Commission will have no difficulty finding that Mrs Law was in fact aware that Ip Kin-yuen was not eligible for the VDS, that it was a purely voluntary scheme and that, by the time of the phone call on 21.4.05 was made, the deadline for the VDS had passed. It is highly unlikely that Mrs Law would (as alleged by Prof Morris) have asked him whether Ip Kin-yuen and Cheng Yin-cheong were included in the VDS and, even less likely, have "argued very strongly that they should be" so included.*
- (9) *Here, the evidence is particularly cogent as regards Ip Kin-yuen. The Commission will have no need to resort to any finding regarding the Magdalena Mok incident which related to a completely different context, and has no probative value in respect of this episode.*

Chapter 9

3rd Allegation – 29 June 2004

*Background*³⁰²

1. Teacher redundancy arises when there is a drop in student enrolment in a school which results in a reduction of classes or closure.
2. In its Report No 39 issued in October 2002, the Director of Audit criticized the “last-in-first-out” arrangement for determining the redundant teachers in schools as “at variance with good human resource management practices” and had the “risk of alienating good teachers and rewarding mediocrity”.
3. After consultations in early 2003, the support to redundant teachers in seeking jobs was streamlined. The support initiatives included specifying a priority appointment period (“PAP”) under which all teaching vacancies would be frozen from February (ie start of PAP) and be de-frozen in early July 2003 when teacher redundancy problem would be resolved (ie end of PAP); arranging group interviews; offering discretion to schools to adopt school-based mechanism that might replace the “last-in-first-out” arrangements for identifying the redundant teachers.
4. In late June 2003, as many redundant teachers were still unemployed, the EMB stepped up efforts to help redundant teachers and also extended the PAP, which eventually ended on 8.8.03. In July 2003, some students of the HKIEd expressed concerns over the PAP and a graduate filed a complaint to the Ombudsman.
5. In October 2003, the Ombudsman started to conduct a direct investigation on EMB’s 2003 priority arrangements for surplus teachers in aided primary schools. In view of the Ombudsman’s investigation being in progress, EMB adopted a procedure similar to

³⁰² Li, Annex G [E2/21/108-111].

that in 2003 for handling the issue of surplus teachers in 2004, and set the PAP to 5 months from 1.2.04 to 30.6.04.

6. On 20.5.04, the Ombudsman issued an investigation report criticizing that EMB had paid little attention to the interest of the HKIED fresh graduates. The Ombudsman also made some recommendations to EMB which included, among others, the re-examination of the arrangements for surplus teachers with focus on matters at macro level so as to balance the interests of all stakeholders, to facilitate retention and recruitment of quality teachers only and to guard against waste of public resources.
7. On 21.5.04, HKIED issued a statement welcoming the Ombudsman's report. The PAP for surplus teachers was therefore not continued after 2004. However, EMB continued to meet with the Hong Kong Professional Teachers' Union ("PTU") to discuss matters relating to the arrangements for surplus teachers.
8. In 2004, given the acute situation of teacher redundancy due to the declining birth rate (when the number rose to 856, as compared to 542 in 2003), the teachers stepped up their request for resolution of unemployment of surplus teachers. The PTU took actions including sit-in protest in June, two hunger strikes in July and two rallies in July and August 2004 respectively. EMB had also arranged for seven meetings with PTU between February and August 2004, including informal meetings between SEM and the President of the PTU, the Honourable Mr Cheung Man Kwong.
9. The closed-door meetings between EMB and PTU had been cordial, despite the aggressive public stance taken by the PTU. The meetings consisted of updating each side of the remaining number of surplus teachers and the effectiveness of various measures taken including new initiatives like Special Supply Teachers and Early Retirement Scheme ("ERS"). Briefly, on these two measures:-
 - (1) In 2003 and 2004, there was an EMB initiative whereby some redundant teachers who had failed to find a job were arranged to be appointed as Special Supply Teachers. This special arrangement ceased in 2005.

- (2) In February 2004, approval was sought from the LegCo to establish an Early Retirement Scheme (“ERS”) for aided primary school teachers, for 3 years from 2004 to 2006 initially, to provide an incentive in the form of ex-gratia payment for some teachers to retire early so as to ease the problem of surplus teachers and make available more teaching posts to accommodate fresh graduates. The ERS has completed three cycles of its operation and about 2,000 teachers have been retired under the scheme.
10. In handling the surplus teachers in 2004, EMB had to balance different interests. On the one hand, EMB had to assist these surplus teachers by various administrative measures such as the PAP. On the other hand, EMB was criticized by the Ombudsman for being unfair to the fresh teacher graduates who were enthusiastic to join the profession but had been hindered from doing so because of the various preferential treatments to the surplus teachers. In fact, the anxiety of the surplus teachers and the frustration of the fresh teacher graduates were duly recognized by the EMB, which had to strike a balance between the competing interests. Moreover, EMB had also to be accountable to the public, paying due regard to the interests of the education sector as a whole.
11. During the meeting between the SEM and PTU on 28.6.04, the two sides reached consensus on the measures to be deployed to help resolve the surplus teacher problem. These included setting a flexible quota in the third round of the ERS, encouraging school sponsoring bodies to redeploy surplus teachers and making arrangements for appointment of unemployed surplus teachers as Special Supply Teachers.³⁰³ PTU also requested that the PAP be further extended until the number of surplus teachers was reduced to 70.³⁰⁴ EMB responded that, unless there was consent from the Ombudsman who made the criticism, the extension of the PAP was not feasible.³⁰⁵
12. In a meeting with the CE on 29.6.04, Prof Li said that there was pressure from the HKIED itself.³⁰⁶ As explained by him: “900 odd

³⁰³ See letter from Prof Li to Mr Cheung Man-kwong (2.7.04) [EMB 7/46/311-312].

³⁰⁴ Day 34/166:11-17 [196].

³⁰⁵ Minutes of meeting (28.6.04) [EMB 7/41/304]; Day 34/168:17-22 [197].

³⁰⁶ EMB 7/43A/308.

students from the Institute, not one or two, signed a petition to us, request[ing] a meeting with me, complaining about the unfairness of PAP”.³⁰⁷

13. The PAP ceased on 30.6.04 as scheduled. When that happened, a large number of surplus teachers got employed immediately. As reported in the Hong Kong Daily News on 11.7.04, 51 surplus teachers were employed in one week after the ending of the PAP.³⁰⁸ Prof Li explained this phenomenon in this way:-

“The reason being very simple. It’s a question of psychology. The school principal has a vacancy. He’s seen the surplus teachers and think, ‘Okay, I’ve seen them. Not bad. But let’s wait until some of the new graduates come out and then I can compare the two, so I won’t make up my mind. So I won’t employ them.’ But once you have a level playing field, everybody is the same, then they know exactly who they want, either the new graduate or the surplus teacher. So that helped the surplus teachers and resolved that problem and since then, Cheung Man Kwong and ‘gau hip’ [PTU] never asked us for PAP again. So you can see the emotional language does not translate in the end, their aim, which was to make sure that the surplus teachers were employed.”³⁰⁹

14. At the same time, EMB continued to assist surplus teachers in seeking jobs by implementing the measures agreed with PTU. By letter dated 6.9.04, Mr Cheung Man-kwong thanked SEM and his colleagues for their assistance throughout the period given to the surplus teachers in 2004, thereby confirming the private cordial relationship enjoyed between the two sides.³¹⁰ Only one other such thank you letter had been received in subsequent years.

The Phone Call

³⁰⁷ Day 34/171:12-15 [198].

³⁰⁸ EMB 7/54/323.

³⁰⁹ Day 34/169:21-170:10 [199].

³¹⁰ EMB 7/64/353.

15. On 29.6.04, Prof Morris was on leave, having just gone on summer holiday for a few days.³¹¹ He was in the United Kingdom at the time³¹² and would not return until July.³¹³ Doreen Cheung was his Senior Personal Secretary.³¹⁴ When she had to contact the President when he was on leave, she would normally dial his mobile phone number.³¹⁵ Prof Luk also had Prof Morris mobile phone number.³¹⁶
16. In the early evening of that day, Doreen Cheng received a phone call from Prof Li asking to speak to Prof Morris. She informed him that Prof Morris was out of town. He asked then to speak to the Acting President. Miss Cheng then transferred the line to Prof Luk.³¹⁷

Evidence of Prof Li

17. In his evidence, Prof Li said that he phoned up because the PAP was going to end. He was hoping that, since the HKIED had issued a statement supporting the Ombudsman's finding that the PAP was not fair in May that year, it would issue a similar welcoming statement when the EMB terminated the PAP, which was to take place the following day.
18. The material part of HKIED's 21.5.04 statement stated as follows:-

“The Hong Kong Institute of Education (“the Institute”) welcomes the “Report on the ‘Priority Appointment Period’ for Surplus Teachers of Aided Primary Schools” issued by the Ombudsman.

As one of the Teacher Training Institutions, the Institute considers that there should be no restriction to the open hiring of teachers. The Institute has all along reflected such view to the Bureau concerned.

³¹¹ Doreen Cheung §6 [W1/9/40].

³¹² Doreen Cheung, Day 20/61:22-23 [200].

³¹³ Morris §35 [W1/12/94].

³¹⁴ Doreen Cheung §2 [W1/9/39].

³¹⁵ Doreen Cheung, Day 20/60:24-61:1 [201].

³¹⁶ Doreen Cheung, Day 20/62:4-6 [202].

³¹⁷ Doreen Cheung §6 [W1/9/39-40].

The Institute re-confirms its support for the fair and open competition for teaching vacancies among all teachers who have received teaching training, so that the schools are able to hire people according to their talents and to choose the most appropriate teachers to fill the vacancies.

The Institute agrees with the Report when it says: “The practice of treating seniority as the condition for employment, and of ignoring personal work performance and professional standard, will adversely affect Hong Kong’s younger generation, the quality of teachers and professional developments in the education sector”. The PAP will leave those young and less experienced teachers, but are committed to the education profession ... outside the door ... or will undermine the desire of young people with good potentials from joining the rank of teachers.

The Institute considers that all qualified teachers who have received professional training, possess appropriate teaching skills, and are able to assist in implementing the education reform should have the opportunity to take part in fair competition for teaching vacancies, in order that they can deploy the teaching talents on the job ...”³¹⁸

19. At the same time, Prof Li had regard to the pressure coming from the HKIED
20. Prof Li was put through to Prof Luk, who he did not know well at all, having met him only once or twice, but never on a social occasion and never alone.³¹⁹ He then described the conversation:-

“A: Then I explained to Prof Luk the purpose of my call was that we were going to end the PAP on 30th June, which was the following day, and since the Institute very kindly issued a statement supporting the ombudsman’s ruling that the PAP was unfair to its graduates, I was hoping that the Institute would issue a similar statement welcoming the ending of this PAP.

³¹⁸ EMB 7/34/292.

³¹⁹ Day 34/64:23-65:3 [203].

Q: Yes.

A: Prof Luk told me that he would certainly consider it, he would talk to his colleagues and would call me back. So I gave him my phone number and that really was that.”³²⁰

21. The phone number given to Prof Luk was a direct number going straight to Prof Li’s secretary. It was not the department’s number.³²¹
22. Prof Li said that there was no subsequent phone call from Prof Luk to him on that day or subsequent days.³²² On 30.6.04, he was informed that HKIED’s Registrar, Dr Francis Cheung, had come out with a supportive statement.³²³ This was reported in the Sing Tao Daily in the following terms (in Chinese):-

“Cheung Wing-ming of the HKIED objected to the extension of the Priority Appointment Period. He criticized the measure as being inappropriate, turning new graduates into second-class applicants and interfering with the schools’ autonomy in hiring teachers. As a result, even the operation of some schools was adversely affected in the past year. In the long term, the [PAP] would also affect the teacher structure of the schools, resulting in discontinuity.”³²⁴

Prof Li thought that this was issued as a result of what he had asked Prof Luk to do the day before.³²⁵ He thought that the matter was closed and that was the end of the matter.³²⁶

Evidence of Prof Luk

23. In his witness statement, Prof Luk said as follows:-

³²⁰ Day 34/65:5-15 [204].
³²¹ Day 34/65:16-21 [205].
³²² Day 34/72:8-11 [206].
³²³ Day 34/73:1-8 [207].
³²⁴ EMB 7/45/310.
³²⁵ Day 34/73:11-13 [208].
³²⁶ Day 34/176:10-15 [209].

“When Professor Arthur Li came on the line, he asked me if I was the Acting President and I confirmed I was. Then he immediately demanded that I issue a statement to condemn the 200 ‘redundant’ teachers who were taking part in a sit-in, and to condemn the Professional Teachers’ Union which was supporting their action, because they were getting in the way of the HKIEd graduates’ employment.

... I said to Professor Arthur Li to the effect that: I was sorry, but I could not issue such a statement as demanded. Both the ‘redundant’ teachers and the current graduates were our students, separated by just a few years. At the HKIEd we sympathized with both groups and wanted to support all our graduates. Professor Arthur Li shot back: ‘So you won’t issue the statement, huh? Alright. I’ll remember this. You will pay!’ He spoke with such anger and such force that I was shocked and frightened, and even now I can still recall his words and tone of voice. But I really could not issue the statement that he wanted me to. So I offered to try to help resolve the impasse instead, and suggested I could perhaps mediate with Mr Cheung Man-kwong. Professor Arthur Li gave me the number of his direct telephone line, which I noted in my pocket diary, and he asked me to call him back. I then rang Mr Cheung, but he said he was already talking with Professor Arthur Li directly. So I called back Professor Arthur Li to say so. He said OK. That was the end of the conversation, and the end of my bit role in this drama. I reported the incident to Professor Morris on his return to the HKIEd.”³²⁷

24. At the meeting of the LegCo Panel on Education held on 28.1.07, Prof Luk also said that he only reported the conversation to Prof Morris after his return to Hong Kong in the middle of July 2004. Prof Luk also said that besides reporting to Prof Morris about this incident, he had told no one else except his wife.³²⁸ This is not so. Apparently, he also told Katherine Ma, who was then the Director of Communications and Institutional Advancement. In his evidence, Ms Ma said that she really could not recall that particular instance. She

³²⁷ Luk §§5.47, 5.49 [W1/13/132-134].

³²⁸ EMB 11/13/88.

could recall that Prof Luk said Prof Li was very angry and he also said that he was trying to offer to Prof Li what he or what IEd could help. This was what she recalled.³²⁹ She could not recall each and every word of her conversation with Prof Luk. She did not recall whether he said “no issuance” of the statement requested by Prof Li.³³⁰

25. It is highly doubtful that Prof Luk only reported the matter to Prof Morris upon his return to Hong Kong in July. In an email dated 30.6.04 to Cheung Man-kwong from Mr Ng Shun-wing, a HKIEd lecturer who was also an executive member of the PTU,³³¹ he reported what Prof Luk just told him on the phone. In points 4 and 5 of this email, he referred to a request by Prof Li for the HKIEd to issue a statement and that Prof Luk “yesterday requested Arthur Li to allocated money for a ‘Teachers Re-training Fund’. At first he refused, but subsequently softened up and said he would consider”. In the last paragraph, Ng Shun-wing wrote:-

“In respect of viewpoints set out above, *Luk already reached consensus with Paul Morris who was in the UK at the time* [italics added].”³³²

As will be seen below, this is a most significant piece of evidence affecting the proper interpretation of the evidence.

Analysis

26. At 9:30 am on 30.6.04, a Senior Management Meeting (“SMM”) was held at the HKIEd. There was an agenda which had seven items and somebody wrote against the words “Any Other Business”: “PTU’s press release on redundant teachers (App F)”.³³³ Prof Luk said that this item was put on the agenda after his telephone conversation with Prof Li, and he was the one who raised it. He decided to raise this item after the phone call but he could not tell whether it was that evening or the following morning. He further explained:-

³²⁹ Day 18/99:6-8 [210].

³³⁰ Day 18/99:16-21 [211].

³³¹ Day 15/73:13-16 [212].

³³² Cheung Man-kwong 1st, Annex 3 [W2/12/36].

³³³ IE 4/106.

“A: Because this was the biggest item of news concerning education at that time. It related to our earlier graduates who were now surplus teachers as well as our own students who were looking for jobs.

Q: Did it occur to you that since you were going to have a senior management meeting that you should discuss this matter with the senior management staff before going back to Prof Li?

A: No, it did not occur to me.

Q: Why not?

A: Because the telephone call had come very, very suddenly – I had not expected it – and the demand to issue that statement to condemn was very quick and very forceful. I simply didn’t have time to think.

Q: But according to your evidence Prof Li asked for the issue of a press statement. He didn’t say you had to do it immediately, did he?

A: I understood him to mean immediately.

Q: Why did you understand him to mean immediately?

A: Because of the urgency of the matter. The urgency of the matter was that the PAP had been set to end on the 30th, and he was calling me in the early evening of the 29th. So that’s why I understood it to be urgent.

Q: Are you saying that it wouldn’t help if you were to issue a statement on the next morning?

A: It would not have helped if I had issued a statement on the 1st or the 2nd. I don’t think that was what he wanted me to do. My gut reaction was that he wanted me to do it and do it right away, and I had to say ‘yes’ or ‘no’ right there and then.”³³⁴

³³⁴ Day 15/82:19-84:20 [213].

27. Further, Prof Luk was asked whether he would have wished to consult with his colleagues on the suggestion by Prof Li for HKIED to issue a statement, especially since he was the Acting President. Prof Luk replied: “*Well, perhaps I should have, but I didn’t* [italics added]”.³³⁵ The following questions and answers are significant:-

“Q: If you are not really asked to give an immediate response, for example, would you wish to have consulted your colleagues?

A: If I was not asked to give an immediate response, I probably would have consulted my colleagues, yes. But then I was given a demand that I had to say ‘yes’ or ‘no’ immediately, on the spot.

Q: But then you could have said, ‘Could I call you back?’ or ‘Can I think about this?’, instead of saying ‘No’?

A: Well, because of the terms of that demand – Prof Li was asking me to issue a statement to condemn the teachers staging the sit-in and the PTU. My main concern really was for the teachers staging the sit-in, because as I’ve explained before both myself and my colleagues felt very strongly that the teachers on the sit-in, the surplus teachers, were our former students and therefore they deserved our care and concern.”³³⁶

He did not in fact answer the question asked.

28. Prof Luk accepted that, before the SMM took place, the Sing Tao Daily article must have been drawn to his attention. It might have been Katherine Ma who brought this to his attention.³³⁷ Judging from the length of the article, it would probably have been quite large on the newsprint page.³³⁸
29. The statement attributed to Dr Francis Cheung in this article was discussed at the SMM. The following was recorded in paragraph 6.4(b) of the minutes of this meeting:-

³³⁵ Day 15/78:1-15 [214].

³³⁶ Day 15/78:23-79:11 [215].

³³⁷ Day 15/87:8-88:5 [216].

³³⁸ Day 15/88:13-17 [217].

“There have been misquotes on press interviews with [Registrar] (on Sing Tao Daily) and telephone conversation between EMB and DCIA [Katherine Ma], and subsequently a rumour that IEd has issued a statement on opposing the hiring freeze, which has not happened at all.”³³⁹

30. Prof Luk confirmed that this subject must have been brought up by him. When asked whether at the meeting he brought up the question of the misquote, Prof Luk answered: “I brought up the whole issue ... It’s likely to have been me that reported it to my colleagues, that it had been brought to my attention that there had been a misquote”. He said it would most likely to have been Katherine Ma who said it was a misquote.³⁴⁰ This is *not* a credible statement for the following reasons:-

- (1) Miss Ma said that she was not the one who suggested to the meeting that there was a misquote.³⁴¹ She had no recollection of any conversation between herself and EMB about the matter.³⁴²
- (2) In his statement, Dr Francis Cheung said that he was not consulted by anyone as to whether he had been misquoted. In fact, he was not aware of the discussion on this issue in the SMM in the morning of 30.6.04, as he was not present at the meeting. He confirmed that the report in the Sing Tao Daily was correct, so he did not take any step to approach the newspaper to correct any error.³⁴³
- (3) In answer to the Chairman’s question “are you aware of any basis for the suggestion that Mr Cheung had been misquoted in Sing Tao”, Prof Luk’s answer was “Not now, no, but at that time I must have been briefed by someone”.³⁴⁴
- (4) Prof Luk agreed that if a staff member had been misquoted on an issue like that in the newspaper, it would have been normal

³³⁹ IE 4/108-109.

³⁴⁰ Day 15/89:17-91:3 [218].

³⁴¹ Day 18/97:21-98:6 [219].

³⁴² Day 18/99:22-100:9 [220].

³⁴³ Francis Cheung §§9, 11 [W2/4/9].

³⁴⁴ Day 15/94:8-18 [221].

for the Institute “either to write or to telephone” the newspaper to correct the error.³⁴⁵ However, on this occasion, no one contacted Dr Cheung to verify whether or not it was a misquote, and Prof Luk professed that he had no idea whether anyone had written or telephoned Sing Tao to correct the alleged error.³⁴⁶

- (5) Notwithstanding that the HKIED had made a similar statement on 21.5.04 (see §18 above), Prof Luk said to Ng Shun-wing that the statement in the Sing Tao Daily by Dr Francis Cheug represented only his own personal opinion and did not represent that of the HKIED: see Ng’s email to Cheung Man-kwong on 30.6.04.³⁴⁷
31. Even more importantly, it is *unlikely* that Prof Luk would have decided to turn down Prof Li’s request for a statement there and then without consulting either Prof Morris or the senior management. As a matter of fact, he *did* consult Prof Morris while he was in the UK, contrary to his representation to the LegCo and his evidence before this Commission. The reasons are as follows:-
- (1) Prof Luk said that there was a practice that Prof Morris would consult him before issuing a press statement.³⁴⁸
 - (2) He accepted that this was the first time when he was called upon to issue a press statement when he was Acting President.³⁴⁹
 - (3) He accepted that perhaps he should have consulted his colleagues in such circumstance.³⁵⁰
 - (4) He tried to justify why he failed to consult by alleging that Prof Li’s demand for the statement was “very quick and very forceful” and he “simply didn’t have time to think”. When it was pointed out to him that he did not in his evidence say that Prof Li demanded the statement immediately, he changed his

³⁴⁵ Day 15/95:5-11 [222].

³⁴⁶ Day 15/95:12-20 [223].

³⁴⁷ Cheung Man-kwong 1st, Annex 3 [W2/12/36].

³⁴⁸ Day 15/80:19-81:12 [224].

³⁴⁹ Day 15/81:21-25 [225].

³⁵⁰ See §27 above.

tune by asserting that it would not help if he was to issue the statement on 1st or 2nd July, so his “gut reaction” was that Prof Li wanted him to do it right away.³⁵¹ Such justification is contrary to the evidence, which is that Prof Li did not in fact require him to either answer immediately, or to issue the statement the very next day. He was content to leave his direct phone number with Prof Luk, so he could come back to him on this matter.

- (5) Prof Luk also accepted that if he was not asked to give an immediate response, he would have consulted his colleagues.³⁵²
- (6) Finally, he was driven to say that he did not consult with the senior management because he said: “I believe my own orientation was not different from the common orientation of my senior colleagues because of “informal chat” he had with them in the past couple of weeks.³⁵³ By implication, he was saying that in fact he did *not* need to consult with his colleagues. This final line of defence is broken when it transpired that:-
 - (a) In fact, he *did* consult with Prof Morris, as evidenced by Ng Shun-wing’s email to Cheung Man-kwong to the effect that he had “reached consensus” with Prof Morris who was in the UK at the time;³⁵⁴ and
 - (b) He also *did* consult with the senior management early next morning at the SMM when the consensus was recorded in the following paragraph of the minutes:-

“IEd’s stand point is to have a balance protection for both redundant teachers and new teachers, as redundant teachers are our alumni while new teachers should be given opportunities for employment. PTU also has the consensus to balance the interests between the two parties as the

³⁵¹ See §26 above.

³⁵² See §27 above.

³⁵³ Day 15/98:13-100:5 [226].

³⁵⁴ Cheung Man-kwong 1st, Annex 3 [W2/12/36]. See §25 above.

former are their members while the latter are their potential members”.³⁵⁵

32. Finally, Prof Luk’s story that he offered to Prof Li to help resolve the impasse by mediating with Cheung Man-kwong, and that he then called him up and briefly asked whether he could do anything only to be told by Mr Cheung that he was already in direct contact with Prof Li does *not* square with the documentary evidence at all that is before the Commission. Rather such evidence clearly points to the following:-

- (1) On 25.6.06, Prof Luk met with the PTU to discuss the PAP issue³⁵⁶, although in his evidence he said he only learned about the issue from the newspapers.
- (2) He had an understanding with Cheung Man-kwong that they would not step on each other.³⁵⁷ In the context of the PAP, this would clearly mean that the HKIED should not make any statement in support of the termination of the PAP.³⁵⁸
- (3) In return for undertaking not to step on the PTU by issuing any statement against its interest, Prof Luk wanted PTU to lobby for the establishment of a re-training fund, which would of course benefit HKIED financially as a major teacher training institution. This is reflected from the terms of Ng Shun-wing’s letter to him dated 30.6.04:-

“Now enclosed is the press release of the PTU for your reference. I believe that Cheung Man-kwong and the HKIED have an understanding not to step on each other. This point and the viewpoints expressed by you today have already been relayed to Cheung Man-kwong by email. Thank you for your position in this incident. I will lobby the PTU to make more effort on the re-training fund matter.”³⁵⁹

³⁵⁵ EMB 4/109.

³⁵⁶ Cheung Man-kwong 1st, Annex 1 [W2/12/34].

³⁵⁷ Day 15/76:16-18 [227].

³⁵⁸ See how Prof Luk tried to avoid agreeing to even this obvious proposition at Day 15/76:15-77:22

[228].

³⁵⁹ IE 4/110.

- (4) It is unlikely that Prof Luk had talked to Cheung Man-kwong between the phone call with Prof Li and Ng Shun-wing's email to Mr Cheung dated 30.6.04. In that email, Mr Ng reported to Mr Cheung five points which Prof Luk told him over the phone, including a discussion he had with Prof Li the day before.³⁶⁰ If Prof Luk had in fact spoken to Mr Cheung *directly* before the time of that email, it would have been unnecessary for Mr Ng to act as Prof Luk's messenger as evidenced by *both* Mr Ng's email and his letter to Luk. These two documents show that it was Mr Ng who Prof Luk contacted by phone and *not* Mr Cheung Man-kwong.
- (5) In any event, it is implausible that Prof Li would have given his direct phone number just so that Prof Luk (who he hardly knew) could help resolve the impasse with the PTU when Prof Li himself was in direct negotiation with Mr Cheung the night before and the issue which divided the parties was Prof Li's decision to follow the Ombudsman's advice to end the PAP on 30.6.04. In his evidence, Prof Li said plainly that he did not need Prof Luk to be a messenger to intervene between him and Cheung Man-kwong.³⁶¹
33. Having regard to all of the above, it is submitted that Prof Li's understanding of the situation is the correct one. He said:-

“I think now with hindsight, with all the evidence before me, I think I have my own theory. I must admit that when I phoned up Prof Luk, it was really simply to ask the Hong Kong Institute to issue a statement supporting the Government's stance on the PAP like they did in May. It was really as simple as that. The following day the Registrar, Francis Cheung, came out and made – or was interviewed by the Sing Tao newspaper and I thought that was the end of the matter. It wasn't until this 10,000-word letter came out that I recalled that conversation back with Prof Luk.

³⁶⁰ Cheung Man-kwong 1st, Annex 3 [W2/12/36].

³⁶¹ Day 37/144:14-145:2 [229].

Looking at the documents, it looks like the senior management – I think he said, in his LegCo, that he didn't really know the details of the surplus teacher problem, he only read it in the newspaper, and yet I believe in the documents he actually met up with the PTU on the Friday before the telephone call ...

Therefore he had full knowledge of what was going on. He was upset that the Registrar came out with a statement supporting the Government's termination of the PAP, so much so that they had to disown the Registrar statement, saying that this was not true, he was misquoted, which was not, again, true – he was not misquoted. So it looks like that he had an understanding, which again was confirmed in the email, with the PTU, to support the PTU, and I think he was trying to appease the PTU. Thinking that our relationship with the PTU was bad, he then concluded that I must have phoned him up to tell him to condemn the PTU and the surplus teachers in order to appease the PTU. It's a shame, because playing politics is one thing but putting the interests of your students below that of your political ambition I think is very sad.”³⁶²

34. In his evidence, Prof Luk also said that only a few HKIED students objected to PAP. In fact more than 900 signed a petition demanding abolition of PAP.
35. Further, Prof Li is also correct in saying that any statement to condemn the PTU and the sit-in surplus teacher would be “very counter-productive”, as he explained in his evidence in re-examination.³⁶³ He regarded his relationship with the PTU to be “extremely cordial” and that the process of negotiation was “continuing”.³⁶⁴ Indeed, in his letter to Cheung Man-kwong dated 2.7.04, setting out the “consensus” reached at the meeting on 28.6.04, he personally appealed to Cheung Man-kwong to “continue the communication and to continue to find a solution”.³⁶⁵ The “thank

³⁶² Day 37/149:15-150:23 [230].

³⁶³ Day 37/142:2-143:2 [231].

³⁶⁴ Day 37/135:9-136:10 [232].

³⁶⁵ EMB 7/311-312.

you” letter from Cheung Man-kwong dated 6.9.04³⁶⁶ bears testament to the cordial nature of his relationship with Prof Li.

36. If, as Prof Li testified, he had merely wanted a statement to support the ending of the PAP (as opposed to condemning the surplus teachers), Prof Luk conceded that he would have discussed the matter with Prof Li as to the wisdom of extending the PAP by a longer or shorter period.³⁶⁷ Indeed, this would have been a very good reason for Prof Li giving to Prof Luk his direct line so Luk could come to him after consulting with his colleagues.
37. At the end of the day, whatever was the nature of the statement requested of Prof Luk, there are really only two possibilities as put to him by Mr Yu SC:-

“One is that you had made the stance when you were asked by Prof Li, representing the Institute as acting president, to say, ‘No’, you are not going to publish that statement, and then afterwards you then obtain a rectification of that position from senior management; that is one possibility ...

The other possibility is that when you talked to Prof Arthur Li as acting president, you were asked to indicate the stance of the Institute on a significant political matter, that you had to consult your senior management, and after you consulted the senior management there was this consensus arrived at.”³⁶⁸

38. It is submitted that, in the light of all the oral and documentary evidence, the second possibility is clearly the more *likely* one, having regard to the following, namely:-
- (1) The circumstances plainly called for formal consultation by Prof Luk, as merely the Acting President, before agreeing to or rejecting Prof Li’s proposal.
 - (2) Prof Luk has failed to give any good reason for not consulting his colleagues.

³⁶⁶ EMB 7/64/353.

³⁶⁷ Day 15/91:25-92:18 [233].

³⁶⁸ Day 15/97:5-23 [234].

- (3) Prof Li did not demand any immediate answer, or that the statement must be issued immediately or on the next day.
- (4) Prof Luk *did* consult with Katherine Ma and, contrary to his representation before LegCo and this Commission, consult with Prof Morris when he was still in the UK and “reached consensus” with him on the issue.
- (5) Prof Luk also *did* consult with the senior management at the SMM the very next morning. By such time, it was unnecessary to take any further action as Dr Francis Cheung, the Registrar, had already come out with a statement in support of the ending of PAP.
- (6) It is likely that it was Prof Luk who said that Dr Cheung had been misquoted. (He was *not* misquoted.) Also, it was he who told Ng Shun-wing, notwithstanding that the HKIED had issued a similar statement on 21.5.04 (see §18 above), that the statement in the Sing Tao Daily by Dr Cheung represented only his own personal opinion and did not represent that of the HKIED.³⁶⁹
- (7) Prof Luk had a political motive to appease the PTU. First, he had an understanding with the PTU not to step on each other (as he was concerned that the PTU might come out with statements against the HKIED, eg regarding LPAT results).³⁷⁰ Further, he wanted to lobby for the re-training fund so as to benefit financially on the part of the Institute. He therefore distorted the situation by claiming that he had already rejected Prof Li’s call for a statement.
- (8) There is no other sound reason for Prof Li giving to Prof Luk his direct phone line except for him to call back after he had consulted with his colleagues and come back with an answer whether or not to issue the statement sought. Prof Luk’s alternative explanation, and what he alleged took place with the

³⁶⁹ Cheung Man-kwong 1st, Annex 3 [W2/12/36].
³⁷⁰ Day 15/76:16-77:15 [235].

phone call to Cheung Man-kwong and the second call to Prof Li hardly makes any sense in the context of what in fact happened.

39. As to the famous words “I’ll remember. You will pay” allegedly said by Prof Li, it is crucial to point out that Prof Li categorically refuted such an allegation, and Prof Luk never told anyone about it until the 10,000 word letter which came out recently on 3.2.07. It is hardly credible that, shocking as those words were painted by Prof Luk, he would not have taken the first opportunity to tell it to Katherine Ma (when he spoke to her shortly after the phone call),³⁷¹ or the senior management (at the SMM the very next morning), or Cheung Man-kwong (when he allegedly spoke to him on the phone, or through Ng Shun-wing, his messenger to Mr Cheung).
40. This point is underscored by the terms of paragraph 6.4(d) of the SMM minutes of 30.6.04. This states:-

“Ag P [ie Prof Luk] has been involved in bridging the communication between the EMB and the PTU, and has proposed to both sides to consider establishing a retraining fund for redundant teachers to prepare themselves to teach other subjects. It is hoped that both parties can soften their position and reach a consensus in improving the current situation.”³⁷²

According to Prof Luk “that’s an oblique mention of the telephone conversation”, but he accepted that he “did not go into the details about the forcefulness of the language, about ‘you will pay’”.³⁷³ It is significant that there was no mention at all in the SMM minutes of any alleged request to condemn the PTU or the surplus teachers. There only reference to any statement was to that of the Registrar, which was “on the hiring freeze”. It appears that no condemnation was anyone was discussed at all at the SMM.

41. What Prof Luk said at his own press conference after HKIED's Council meeting on 7 February 2007 aptly sums up his view on "academic freedom" and "freedom of speech". To him, these are

³⁷¹ Prof Luk said that he really doesn't remember telling Ms Ma “those three sentences”, including “I’ll remember; you will pay”: Day 13/36:19-23 [236].

³⁷² EMB 4/109.

³⁷³ Day 13/41:3-21 [237].

always a political issue (“我覺得學術自由、言論自由無論何時也是一個政治問題，在任何環境下也是一個政治問題。”)。³⁷⁴ This view would be consistent with attempts to make use of “academic freedom” to achieve political objectives.

42. When the phone call of 29.6.04 was revived by the 10,000 word letter, Prof Luk already had in mind the failed bid for the renewal of Prof Morris’ appointment as President, the failed negotiations with the CUHK on tight federation and, of course, his own failed attempt to renew his contract for another three to five years. Also in his own mind, he attributed all of these failures to one person, the SEM acting either personally or through his alleged agent, Dr Thomas Leung. There is every motive on the part of Prof Luk to smear Prof Li with what he now calls a “literary device”.³⁷⁵
43. In the light of Ng Shun-wing’s email to Cheung Man-kwong, perhaps a more fitting “literary”, but equally fictitious, “device” would be for Prof Luk to say to Prof Li:-

“I’ll remember, if you will pay me by offering a ‘re-training’ fund!”

Executive Summary

- (1) *Prof Li wanted the HKIEd to issue a statement in support of the end of the PAP. He did not ask Prof Luk to “condemn” the PTU and the sit-in surplus teachers as such a statement would be counter-productive.*
- (2) *The following morning at the SMM no mention was made by Prof Luk about condemning PTU/ surplus teachers. Only “hiring freeze” was discussed.*
- (3) *There are two possibilities in interpreting the situation surrounding the phone call of 29.6.04: either Prof Luk had already rejected Prof Li’s request for the supportive statement*

³⁷⁴

EMB11/12/63

³⁷⁵

Day 15/106:3-21 [238].

about ending PAP in the telephone call, or he indicated he had to come back to Prof Li, and that was why Prof Li left his direct phone number with him.

- (4) *The latter is more likely having regard to a host of considerations:-*
- (a) *The circumstances plainly called for formal consultation by Prof Luk, as the Acting President, before agreeing to or rejecting Prof Li's request for a supportive statement on the ending of PAP.*
 - (b) *Prof Luk has failed to give any good reason for not consulting his colleagues.*
 - (c) *Prof Li did not demand any immediate answer, or that the statement must be issued immediately or on the next day.*
 - (d) *Prof Luk did consult with Katherine Ma and, contrary to his representation before LegCo and this Commission, consult with Prof Morris when he was still in the UK and "reached consensus" with him on the issue.*
 - (e) *Prof Luk also did consult with the senior management at the SMM the very next morning. By such time, it was unnecessary to take any further action as Dr Francis Cheung, the Registrar, had already come out with a statement in support of the ending of PAP.*
 - (f) *It is likely that it was Prof Luk who said that Dr Cheung had been misquoted. (He was not misquoted.) Also, it was he who told Ng Shun-wing, notwithstanding that the HKIEd had issued a similar statement on 21.5.04, that the statement in the Sing Tao Daily by Dr Cheung represented only his own personal opinion and did not represent that of the HKIEd.*
 - (g) *Prof Luk had a political motive to appease the PTU. First, he had an understanding with the PTU not to step*

on each other (as he was concerned that the PTU might come out with statements against the HKIEd, eg regarding LPAT results). Further, he wanted to lobby for the re-training fund so as to benefit financially on the part of the Institute. He therefore distorted the situation by claiming that he had already rejected Prof Li's call for a statement.

- (h) There is no other sound reason for Prof Li giving to Prof Luk his direct phone line except for him to call back after he had consulted with his colleagues and come back with an answer whether or not to issue the statement sought.*
- (5) As to the famous words "I'll remember. You will pay" allegedly said by Prof Li, it is crucial to point out that Prof Li categorically refuted such an allegation, and Prof Luk never told anyone about it until the 10,000 word letter which came out recently on 3.2.07.*
- (6) When the phone call of 29.6.04 was revived by the 10,000 word letter, Prof Luk already had in mind the failed bid for the renewal of Prof Morris' appointment as president, the failed negotiations with CUHK on tight federation and, of his own failed attempt to renew his contract for another three to five years. Also in his own mind, he attributed all of these failures to one person, the SEM acting either personally or through his alleged agent, Dr Thomas Leung. There is every motive on the part of Prof Luk to smear Prof Li what he now calls a "literary device" to end his 10,000 word letter.*

CHAPTER 10

HKIED FUNDING

Introduction

1. Apart from the 3 Allegations in the Terms of Reference, Profs Morris and Luk have alleged that Mrs. Law and/or Prof. Li have targeted the HKIED by abusing whatever power they have wielded over both funding for the HKIED, and its student numbers, in order to seriously disadvantage and/or damage the HKIED³⁷⁶ such that it had no choice but to merge with another institution³⁷⁷. The cuts are therefore the 2 pegs from which they attempt to hang their coat of merger.
2. The next 3 chapters therefore deal with the issue of these cuts. Funding is considered first because it is a relatively straightforward topic. Prof Li and Mrs. Law's case is that there is no room for any suggestion that these cuts were made for the reasons outlined above. This is because of the following factors:
 - (1) All of the available, objective evidence clearly indicates that there were entirely rational and objective reasons for the funding cuts. One indication of this was that the majority of the funding cuts had been predicted well in advance by the HKIED.
 - (2) This allowed the HKIED to put measures in place that enabled them to weather the storm relatively well, which was what happened.
 - (3) Furthermore, EMB worked together with the HKIED to ensure that it did not suffer unnecessarily.
 - (4) The impact of the cuts on the HKIED has been blown all out of proportion in this Inquiry in order to support Prof Morris and Luk's theory of merger.

2003: The Government's dire financial situation

³⁷⁶ Profs Morris and Luk prefer emotive language such as “punish” and “rape” (Morris, §37 [W1/12/95]; Prof Luk, §§5.42-5.46 [W1/13/131-132]).

³⁷⁷ Prof Morris clearly prefers the catch-all phrase “unviable” (Morris, Day 5/70:12-71:3). [239]

3. The undisputed evidence on this matter was as follows³⁷⁸:
- (1) In 2003 the Hong Kong economy was in bad shape, having just emerged from the Asian financial crisis and SARS. Indeed, the Government had been in a severe deficit for the 2 years prior to that³⁷⁹.
 - (2) For 2003/04, the then-Financial Secretary set a savings target that by 2008/09, the total Government expenditure should be brought down to \$200 billion. That was generally known as the “efficiency saving”, and required every bureau and department (including the then-ED and EMB) to achieve 11% saving over 5 years.
 - (3) EMB faced a particular problem compared to other bureaux in that 96% of its budget was used to subvent schools, institutions and for student financial assistance. In an economic downturn, applications for financial assistance increased, while it was not possible to cut the number of teachers in primary or secondary schools. There was therefore extremely limited room for achieving savings within the remaining portion of EMB’s “envelope”.
 - (4) EMB also faced the difficulty of having to implement the education initiatives which the Government had already committed to deliver as policy. Furthermore, in a situation where a policy commitment had been made by the Government, the funding that was designated for that commitment had to be used for that purpose. Any savings left after the policy had been achieved or expired would have had to be returned to Central, and not used for anything else³⁸⁰.
 - (5) In mid-2003, EMB carried out an internal financial forecast and found that it could be facing a deficit of up to \$2.4 billion by the year of 2007/08 if EMB had to deliver all the education initiatives which the Government had already made policy commitments to, coupled with other contractual growth items

³⁷⁸ See generally Law, Day 29/163:5-164:16. [240]

³⁷⁹ Li, Day 33/38:19-25. [241]

³⁸⁰ Li, Day 33/46:2-25. [242]

of expenses such as salary increments, contributions to MPS which EMB estimated to be in the region of 4% per annum.

EMB first took the savings onto itself, then the tertiary sector

4. The first thing EMB did in the first year of the saving period (2003) was to look for savings internally. By merging the Education Department with the EMB, they managed savings of \$900 million. However, savings were an ongoing business, and the deficit in the following year was just as bad and EMB had to come up with another billion dollars or so of savings³⁸¹.
5. Prof Li felt that it would be difficult to look for savings from the school sector for the reasons set out above. One option was to spread the savings across-the-board under EMB's "umbrella", with everyone giving up a few percent year after year. But he thought that it would be extremely bad for morale, particularly at a time of ongoing education reform in the primary and secondary school sectors. He thought it was right to leave the school system untouched, and to allow the reforms to continue³⁸².
6. This meant that the *only substantial area* EMB could make savings was in the tertiary sector. There were also some reasons SEM thought the tertiary sector was in a much better position, as compared with the school sector, to cope with the "cuts"³⁸³:
 - (1) Tertiary institutions have reserves.
 - (2) Tertiary institutions have the ability to raise funds themselves.
 - (3) The tertiary sector is full of intelligent people.
 - (4) In 2003, EMB had introduced the "matching grant" for tertiary institutions which means that every \$1 donated would be matched by \$1 from the Government. Prof Li therefore thought that this would cushion the necessary funding cuts.

³⁸¹ Li, Day33/48:1-9. [243]

³⁸² Li, Day33/48:12-23. [244]

³⁸³ Li, Day 33/48:24-49:15 [245]; 50:25-51:4 [246]

Highly unpopular measures forced to be taken by EMB against school sector

7. Apart from this initiative in the tertiary sector, EMB did all it could to extract savings while maintaining quality, including taking highly difficult decisions such as closing down unpopular schools, commissioning out evening schools to improve efficiency, and proposing to gradually withdraw subvention from the English Schools Foundation³⁸⁴ to align with other international schools which receive on subvention.

HKIED knew well in advance that the cuts were coming

2003: HKIED set ups of Focus Group on Resources

8. At the beginning of 2003, HKIED set up a Focus Group on Resources. It was under the Task Force on the Future Development of HKIED and was concerned with the resources and financial situation or status of HKIED. As of 19 June 2003 it had already included the following in its projections³⁸⁵:

- (1) The upcoming removal of front-end loading: This translates into a 9% provision in the early years of a “new starter” institution. HKIED was in fact aware of this as early as 2001³⁸⁶. The removal would be in the order of 9% from the UGC grant to the HKIED³⁸⁷. This would have been removed over a triennium once an institute had achieved self-accrediting status, 2003³⁸⁸.
- (2) Declining student numbers: This was due to demographic changes and had been made known to HKIED in early 2003³⁸⁹. This was a factor also mentioned by Morris during his review at the 49th HKIED Council Meeting on 1 December 2006³⁹⁰.

³⁸⁴ Law, Day 29/165:1-11 [247]

³⁸⁵ Lai, Day 20/75:14-84:3 [248]; [IEEM1/24/213-234 “Summary of the Work of the Focus Group on Resources”]

³⁸⁶ Morris, Day 8/2:9-12 [249]; 4:2-14 [250]

³⁸⁷ Morris, Day10/153:20-25 [251].

³⁸⁸ Li, Day34/48:24-49:11 [252]. See also [EMB11/Tab9/48].

³⁸⁹ Morris, Day 8/2:1-4:1 [253]; [IEEM1/24/213 §38]

³⁹⁰ [IEEM2/130/§§84-85].

- (3) Reduced unit cost for 2004/5 of 10%: This had been made known to all institutions including the HKIED in early 2003³⁹¹.
9. The work of the Focus Group on Resources was later summarized and reflected in Mr Alfred Chan's presentation at the 1st Council Retreat on 23 April 2004³⁹².

July 2003: HKIED had already anticipated upcoming income reduction of 30-40%

10. By around July 2003 HKIED itself had anticipated and announced at a staff forum *inter alia* that the combined effect of the 3 factors outlined above would result in a reduction of 30-40% of the income in the coming four years:

July 2003 Staff Bulletin had, under the heading "Institute News" [ML-A2/553]³⁹³

"... the Council members and management team advised that deficit is imminent. If the current expenditure pattern is to remain unchanged, the anticipated deficit will grow gradually to \$236 million in 2007/08. Despite an annual saving of \$51 million identified through various efficiency drives, we are still anticipating a deficit of \$185 million by then.

The anticipated deficit is mainly caused by (1) projected declining student numbers due to demographic changes; (2) reduced student unit cost as advised by the Government, and (3) the anticipated removal of the front end loading which was granted by UGC to a young institution at its early stage of establishment. The combined effect of these three factors is estimated to bring about a reduction of 30-40% of the income of the coming four years."

HKIED's plans to cope with the forthcoming funding cuts

11. In addition to the voluntary retirement scheme for non-academic staff which was completed in 2003, it was necessary to introduce another voluntary scheme, called Voluntary Departure Scheme (VDS), coupled with what is known as Compulsory Retirement Scheme

³⁹¹ Morris, Day 8/2:1-4:1 [254]; [IEEM1/24/213 §38]

³⁹² Lai, Day 20/86:20-23 [255]; [E1/238]

³⁹³ Morris, Day 8/7:3-8:6 [256].

(CRS)³⁹⁴, for academic staff. The details of these have already been covered in detail above in relation to the 2nd Allegation. In the planning context:

- (1) planning for the VDS had started by March 2003³⁹⁵; and
- (2) the VDS and CRS for academic staff were discussed at the 14 October 2003 lunch meeting between Dr. Leung and Mr. Alfred Chan of the HKIED Council and Prof Li and Mrs. Law³⁹⁶.

2004: Bad news for all

SEM meeting with the 8 institutions in January 2004

12. On 3 January 2004 it fell to Prof Li to discuss with the tertiary education institutions the bad news about funding cuts, i.e. that the sector was going to make a 10% funding cut in 2004.
13. For the 2005/08 triennium, EMB was considering cutting another 5% upfront in order to achieve the saving cut required of EMB. But Prof Li knew well that the institutions would not or could not accept this. He thought it was more a process of negotiation where, if the institutions could accept the 10% cut straightaway in 2004, EMB would in the 2 following years impose no further cuts but look for money elsewhere. If, however, the EMB was suffering the projected deficit of HK\$2.4 billion in 2007/08, then the institutions might well have to bear another 5% cut³⁹⁷.
14. At the time, these were all projections, hence the EMB was prepared to be flexible. Towards the end of the negotiation with the institutions, the “0-0-X” formula was suggested, with “X” reflecting flexibility, i.e. if worst came to worst, the final cut would be capped at 5%, but if the financial situation improved, “X” could be “0”. In the end, as is common knowledge, the situation improved significantly and there was no longer the need for the final year cut, so it went back to “0-0-0”³⁹⁸.

³⁹⁴ Morris, Day 8/4:21-6:8 [257]

³⁹⁵ Morris, Day 8/13:11-14:14 [258] [EMB12/20/443-445]

³⁹⁶ Morris, Day 8/11:19-12:5 [259]

³⁹⁷ Li, Day33/50:8-12 [260].

³⁹⁸ Li, Day33/50:13-22 [261].

15. As an aside, on 7 January 2004, the Finance Committee rejected EMB's funding proposal for the UGC sector. If Prof Li did not change the way EMB funded tertiary institutions, the proposal would never be passed and by July the institutions would have had to operate from their reserves until the next financial year³⁹⁹. Fortunately, however, they approved his proposal for 2004/05 funding on 27 February 2004.

Other across-the-board cuts suffered by the end of 2004

16. It was true that by the end of 2004, the HKIED had suffered an overall drop in funding over the 4-year period in the order of 47%⁴⁰⁰. The difference between the estimated drop in income of 30-40% (as outlined above) and the ultimate drop of 47% was attributed to 3 "additional" reductions which only came to light later⁴⁰¹, but which were due to factors all known to HKIED at the time:

- (1) No more exemption from the 10% unit cost reduction: This exemption was given to HKIED during the initial stage of its establishment in the 1998/2001 triennium. It had to cease after HKIED became a mature institution. It was offset by what is called a monotechnic premium of 6%, which was an arbitrary "extra-formulaic" figure given to HKIED to compensate for its high running cost as a monotechnic institution⁴⁰². This had nothing to do with the "front end loading". It was an efficiency saving which other institutions had to suffer, but which HKIED did not in 1998/2001 triennium because it was a developing institution. The net effect, after adding back the monotechnic premium, was a cut of 4% only⁴⁰³.
- (2) The anticipated 2007/08 "0-0-5" efficiency saving: This was applicable across the board to all institutions, not just HKIED, as Prof Morris acknowledged⁴⁰⁴. In the end, this was not necessary.

³⁹⁹ Li, Day34/151:25-152:12 [262].

⁴⁰⁰ Morris, Day 8/8:7-12 [263]

⁴⁰¹ Morris, Day 8/8:13-16 [264]

⁴⁰² Li, Day34/48:9-16 [265]; [EMB11/Tab9/48].

⁴⁰³ Morris, Day 8/8:17-10:7 [266]; [EMB11/Tab9/47-48].

⁴⁰⁴ Morris, Day 8/10:10-11:6 [267].

- (3) Residual effect of the civil service pay-cut of 3%: This was across the board in the public sector⁴⁰⁵.
17. Adding these factors together meant a total drop of 33% for the 2005/08 triennium. Including the cut in the rollover year of 2004/05, the cumulative reduction was 47%⁴⁰⁶.

HKIED coped well with the cuts

Initial projections were of deficits

18. In HKIED's Staffing Committee document "Academic Manpower Proposal" dated January 2005, there was a projected deficit of \$8 million for 2005/6, \$20 million for 2006/7 and \$94 million for 2007/8. If nothing else was done, all this would have to be offset against the HKIED reserve of \$575 million (as of 2004/05)⁴⁰⁷.

EMB offered support to help HKIED through the cuts

19. However, a number of things happened at the time which helped HKIED manage the cut:
- (1) The VDS/CRS was successfully implemented⁴⁰⁸. This was supported by EMB, as has been outlined in relation to the 2nd Allegation.
 - (2) The number of BEd places for the in-service Early Childhood Education (ECE) degree was increased by 30 FYFD places after discussion between EMB and the UGC⁴⁰⁹.
 - (3) Some n-service Certificate (ECE) courses were converted into tendering places. In the end, in 2005 HKIED obtained 120 of these, which was more than it would have received if the tendering exercise had never been carried out. The tendering exercise is dealt with in great detail later in the chapter on ECE⁴¹⁰.

⁴⁰⁵ Morris, Day 8/11:8-14 [268].

⁴⁰⁶ Morris, Day 8/11:11-18 [269]; [EMB5(1)/13/162]

⁴⁰⁷ Morris, Day 8/18:2-22:9 [270]

⁴⁰⁸ Morris, Day 8/22:24-23:9 [271];

⁴⁰⁹ Morris, Day 8/23:10-25:8 [272].

⁴¹⁰ Morris, Day 8/23:9-18 [273]; Lai

- (4) Special projects funded by EMB, in particular the project operated by Prof Magdalena Mok in relation to the Centre for Assessment Research Development (CARD), and another one in relation to Prof Lo Mun Ling's project in connection with the CLASP project. The total amount of funding obtained from EMB for these special projects was around \$63 million⁴¹¹. It is notable that during the re-appointment process for Prof Morris, both he and Grossman were keen to portray these as achievements of Prof Morris during his term as President⁴¹².

EMB's support of HKIED was in fact well-received and appreciated by Professor Morris, as demonstrated in various e-mails he sent to Mrs. Fanny Law over this period.⁴¹³

20. The net result was that HKIED ended up with a budget surplus of \$129 million in 2005/06, rather than a deficit of HK\$8 million. Hence by 2006 its financial reserves were HK\$600 million⁴¹⁴.

No link between funding cuts and “merger”

No evidence to support the link

21. Prof Morris eventually acknowledged, in response to a question by the Chairman of the Commission, that he was not arguing that there was not a logic or rationale behind each of these cuts⁴¹⁵. Prof Luk took a similar line, agreeing that there were rationalisations for the cuts, although when pressed by Counsel for the Commission he quickly tried to say that they had to be considered alongside student numbers, which are the subject of the next 2 chapters⁴¹⁶.
22. With respect, these arguments advanced by the various witnesses came nowhere close to establishing that any of the funding cuts suffered by the HKIED during this period were caused by way of pressure to merge. Indeed, given the support that EMB lent to the HKIED during the period, as outlined above, it is much too far-fetched

⁴¹¹ Morris, Day8/45:21-46:18 [274]; Law, Day29/95:19-96:19 [275]

⁴¹² [ML-A1/Tab1/8/§4, ML-A1/Tab1/11-12/§15, ML-A1/Tab1/62]; [IE2/Tab51/130 to 131/§§87 and 91];

[IE2/258/2nd Bullet point].

⁴¹³ [EMB11/1/3]; [EMB11/1/2]

⁴¹⁴ Morris, Day8/21:3-22:23 [276]; [EMB13/Tab28/617-1].

⁴¹⁵ Morris, Day 11/153:22-154:2 [277]

⁴¹⁶ Luk, Day14/22:20-23:5 [278]; Day15/58:19-23 [279].

to even attempt to draw such a link. Therefore, that these cuts were suffered is in itself neither here nor there. The attempt to link them to the student number cuts is also based on several misunderstandings, as will be shown in the next 2 chapters.

Such a link is inherently improbable

23. This was vividly demonstrated by Prof Li while he was being cross-examined on the outcome of the merger of CUHK and HKUST. Firstly, as he pointed out, no sensible SEM would even think of using funding cuts as a means of forcing or promoting a merger, as it would defeat the very purpose of encouraging a merger, being the improvement of quality⁴¹⁷.

Prof Li Day34/99:3-100:3

Q: Prof Li, perhaps you can understand where I'm coming from. I'm not saying that the merger that you are proposing is driven by fiscal consideration. I'm not saying that. I'm saying that even if the merger is driven by considerations of bringing about a better education scene in Hong Kong, in terms of higher education, I'm just asking what are the ways and means that you as the secretary have contemplated as being within your power to bring about that particular scenario.

A: I see where you're coming from now, Mr Yu. Basically, you are saying if they won't merge, we will start cutting them down or cutting back their funding to force them into a situation where they will merge, but that is actually defeating your purpose. The purpose of merging is not just reducing the numbers, the purpose of merging is to raise the standards.

Q: Yes.

A: If you start cutting their funding, the standard is going to be affected.

Q: Yes.

A: Therefore, at the end of the day, you will be cutting your nose to spite your face.

Q: Yes.

⁴¹⁷ As to the Prof Li and the Government's view on the purpose of merger see Li, Day33/39:1-40:13 [280]; [EMB14/1261].

A: I don't think any sensible Secretary of Education and Manpower would want to cut his nose to spite his face.

24. Secondly, and if he had really wanted to take such an irrational step in order to try and force a merger, he could have done so in relation to other universities. However, he had not done so.

*Prof Li Day*35/191:12-192:10

A: ... As a result of my action, which a lot of people criticise, which today you are still criticising, I give it to you that there was rational discussion at two campuses, a rational decision was made and it is a decision which I accepted. I have not, because Chinese U and UST did not merge, then gone off and cut their funding. Did I then go off and ask the president to sack their staff? Did I ask them to come out and condemn surplus teachers? Did I ask them for anything else? Nothing.

Q: That's true. I'm not suggesting that you tried to cut the funds of your former university, Chinese University.

A: Neither did I cut UST's funding. If I am so anxious to use funding to force a merger, why did I not cut these two guys? They were prepared. They were all set to go and they turned around at the end and said, "No, we're not", and that's the end.

Q: The answer is they're bigger, HKIEd is the small one.

A: What about Lingnan? Lingnan is only half the size of HKIEd, only 2,000-odd students.

Q: But I thought --

A: They came right upfront and said under no circumstances do they want to merge with anybody. Once they said that, I accepted it. And that is the end of that.

Conclusion

25. The above clearly indicates that the funding cuts were not “targeted” at HKIEd, and had nothing whatsoever to do with HKIEd’s willingness (or otherwise) to merge with CUHK, let alone any intention to make it “unviable”. On the contrary, what the evidence does establish is that there were inevitable funding cuts, and that the EMB helped the HKIEd alleviate these effects. Perhaps the only way this topic is relevant is that it shows how ready Profs Morris and Luk are keen to latch on to any reason that comes to mind as being

examples of “deliberate attempts” on the part of EMB to disadvantage HKIED to make it unviable or to force it to merge. This becomes even more obvious with regard to student numbers.

Executive Summary

1. *Due to the financial downturn of HK economy in 2003/04, funding cuts in the 2004/5 rollover year and the 2005-08 Triennium on the education sector were inevitable though unfortunate. Be that as it may, these were across-the-board. They were not, and there has never been any evidence whatsoever to suggest that they were, targeted at HKIED.*
2. *HKIED would still have faced the funding cuts regardless of whether it was willing to merge with another institution. Furthermore, it was aware that the majority of these cuts were known to be on the way before they actually came.*
3. *EMB has in fact been entirely supportive of the HKIED’s attempts to alleviate the effect of the funding cuts by providing extra funding via other incentives and supporting its cost-saving attempts.*
4. *On the available evidence, the mere fact that there were funding cuts does not establish any necessary linkage to the “merger” issue.*
5. *In any event, it is inherently implausible that any rational SEM would adopt the technique of cutting funds in order to force a merger. If Prof Li were indeed so irrational and had wanted to use funding cuts to force a merger, he could have done so with CUHK/HKUST and/or Lingnan University, but did not.*
6. *This issue has clearly been blown entirely out of proportion by Profs Morris and Luk in order to try and lend weight to their argument that Prof Li was trying to force the HKIED to merge.*

CHAPTER 11

STUDENT NUMBERS I: ALL APART FROM EARLY CHILDHOOD

Introduction

1. Having eliminated the first peg of funding cuts, we now turn to the second, namely, student numbers (save for the topic of Early Childhood Education (ECE), which is dealt with in the following chapter for reasons of convenience).
2. As with all the other allegations premised on cuts, this allegation will only have been made good if there is sufficient, cogent evidence to prove that Prof Li and/or Mrs. Law contrived to cut student numbers with the intention of seriously disadvantaging and/or damage the HKIEd such that it would be forced to merge. It is hard to imagine a more serious charge that could be levelled against Prof Li and/or Mrs. Law, given their duties and responsibilities as SEM and then-PSEM.
3. Bearing in mind this, and the principles as to burden of proof and the necessary evidence outlined in Chapter 2 above, EMB submits (and it will be demonstrated below) that there has been no cogent evidence in support of not only the 1st Allegation, as has been outlined previously, but also this particular charge, , despite the Tribunal having heard 31 days of testimony and perused thousands of pages of documents.
4. The situation with Early Childhood Education (ECE) is dealt with in a separate chapter due to the number of related issues raised therein. However, that aside, the credible, available evidence clearly demonstrates that the cuts in the HKIEd's student numbers were not made by the EMB, let alone with an intention to target HKIEd, but rather were due to:
 - (1) UGC decisions that have nothing to do with EMB input;
 - (2) factors beyond any one party's control (including the EMB);and

- (3) other rational reasons, such as the implementation of policies focused on improving Hong Kong's educational system.
5. Furthermore, the existence and extent of certain alleged cuts has been greatly exaggerated by Profs Morris and Luk.
6. In light of the above, and as will be further explored below, the mere fact that the HKIEd's student numbers may have changed over the 2004/05, 2005/08 and 2008/09 planning periods is patently insufficient to prove these serious allegations. The reliance placed by Profs Morris and Luk on impressions has no legal basis, and bemuses rather than assists⁴¹⁸.

The process of determining student numbers

UGC's Role

7. The evidence and the line of questioning deployed on behalf of Profs Morris and Luk, makes the suggestion that UGC is somehow supine to and never questions EMB's projections or policy requirements⁴¹⁹. This is incorrect, as can be seen from consideration of the UGC's overall role in the student number process.
8. The UGC is appointed by the Chief Executive to, inter alia, advise the Government on the application of such funds as may be approved by LegCo for education in such institutions. The UGC has neither statutory nor executive powers. At all material times since February 2001, there are 8 institutions of higher education which are funded through the UGC, namely City University of Hong Kong ("CityU"), Hong Kong Baptist University ("HKBU"), Lingnan University ("LU"), Chinese University of Hong Kong ("CUHK"), HKIEd, The Hong Kong Polytechnic University ("Poly U"), the Hong Kong University of Science and Technology ("HKUST") and the University of Hong Kong ("HKU")⁴²⁰.
9. Members of UGC are appointed by the Chief Executive in their personal capacity and all are prominent in their fields. A good portion of the members are accomplished academics and higher education administrators from outside Hong Kong, while the rest are local

⁴¹⁸ Lai, Day19/119:23-120:5. [281]

⁴¹⁹ See *inter alia* Morris Day11/69:7-71:20. [282]

⁴²⁰ Paras 1.1 and 1.5, Notes of Procedures of UGC (2007 Edition) [UA/2]; (2001 Edition) [UA/90].

members, comprising eminent community leaders and academics of high standing. No government officer sits on the UGC, although its secretariat is staffed by civil servants⁴²¹.

10. The main function of the UGC as set out in its Notes on Procedures⁴²² is to allocate funding to its funded institutions, and to offer impartial expert advice to the Government on the strategic development and resource requirements of higher education in Hong Kong. For the purpose of planning and funding, the UGC basically follows a triennial planning cycle, to coincide with the recurrent grant allocation exercise of the UGC-funded institutions. The cycle starts three years before the commencement of each triennium and covers the following main stages⁴²³:

- (1) The issue of letters to the institutions (“Start Letters”) incorporating broad policy guidelines and parameters received from the Government (including the indicative student number targets and specific manpower requirements).
- (2) The consideration of the Academic Development Proposals (“ADPs”) submitted by the institutions in accordance with the issued Start Letters and the UGC’s advice on these proposals as they develop (“Allocation Letters”).
- (3) The examination of costed estimates submitted by the institutions and the detailed recurrent grant assessment exercise; and
- (4) The submission of the specific grant recommendations to the Government, and following the approval of the financial implications by the Finance Committee of LegCo, the issue of letters (“Allocation Letters”) formally notifying the institutions of the details of their respective approved recurrent grants.

11. Specifically, it is the UGC, and not the EMB, that has to determine⁴²⁴:

⁴²¹ Para 1.10, Notes of Procedures of UGC (2007 Edition) [UA/3]; para 1.9 (2001) Edition [UA/91-92].

⁴²² Para 1.7, Notes of Procedures of UGC (2007 Edition) [UA/2]; (2001 Edition) [UA/90].

⁴²³ Para 2.1, Notes of Procedures of UGC (2007 Edition) [UA/11]; (2001 Edition) [UA/94].

⁴²⁴ See: para 1.7, Notes of Procedures of UGC (2007 Edition) [UA/2]; (2001 Edition) [UA/90].

- (1) precise grant recommendations in the light of indications of the level of funding that can be made available;
 - (2) overall student number targets of study and year to meet community needs as agreed with the Government;
 - (3) the breakdown of these numbers between institutions, as agreed in principle by the institutions.
12. In relation to student numbers, the UGC does not promise that institutions will get whatever numbers they want. It is also incorrect for institutions to categorise student numbers as “theirs” that could not be taken away under any circumstances, as the UGC made clear when it wrote to HKIED about the Lingnan University joint programme:

C/UGC [U2/379]

“... I must clarify that *no institution should assume to “own” its FYFD places for a new triennium as a matter of right.* While the approach of redistributing FYFD numbers between institutions was not stated explicitly as an alternative in my start letter, *I must say that it has always been within the discretion of my Committee to do so.* Indeed, as you may recall, the UGC did redistribute quite substantial FYFD numbers from CUHK, HKUST and HKU *to your Institute for the 2001-2004 triennium.*”
(emphasis added)

13. In discharging these functions, the UGC has the following relationship with the EMB:-
- (1) The UGC obtains advice from the Government on, and pays regard to, the indication of the level of overall funding that can be made available⁴²⁵. However, it acts as an independent body between the Administration and institutions that advises the institutions on funding independently⁴²⁶.

⁴²⁵ [EMB3.1/243 at 243-244]
⁴²⁶ Stone, Day21/115:19-116:1. [283]

(2) Insofar as student numbers are concerned, as a matter of functions and responsibilities:

(a) The EMB has the duty to and is responsible for providing the UGC with advice (not instructions) on community needs on manpower requirements in terms of overall student number targets by level of study and year. These projections are provided in those disciplines and professions of which the public sector is the major employer or where the community has expressed a strong interest in the provision of adequate manpower, including teachers, lawyers, medical doctors, allied health professionals such as physiotherapists, nurses, and social workers⁴²⁷.

(b) However, the EMB does not present the UGC with a *fait accompli*. Rather, the UGC will consider *prima facie* whether the EMB has done its thinking properly by considering how figures compare to the previous triennium, and if there are any major changes, which may not be good for the institutions or planning. Unless there is something very egregious then the UGC will push numbers out to the institutions⁴²⁸. For example, where there is a big shift (such as with the shift to nursing in 2004/05 and the shift towards education in 2005/08) the UGC considers whether the scale is achievable and/or something they can deal with⁴²⁹. There is then a bilateral exchange of opinions wherein UGC would, if necessary, make counter proposals to EMB, which EMB could take on board and revise its advice. A similar process may take place where there are complaints from institutions as to the EMB's advice (such as the 2008/09 KLA allocations for Art/Music/PE as outlined below).

(c) The EMB does not however decide or even advise on the specific allocation of student numbers amongst the 8

⁴²⁷ [EMB3.1/243 at 248-257]

⁴²⁸ Stone, Day 22/30:11-25. [284]

⁴²⁹ Stone, Day 22/31:17-32:24. [285]

institutions, let alone the 4 teacher education institutions. Instead, the UGC, after obtaining such advice and having paid due consideration to them, independently determines the allocation of specific student numbers amongst the 8 institutions. While the UGC could ask for and take into account the EMB's views on relevant parts of ADPs concerning teacher education provision, EMB's views would usually only be on a manpower planning basis, as opposed to the quality of programmes provided by any particular institution. Furthermore, this would only happen if there were outstanding issues, not necessarily as a matter of normal practice⁴³⁰.

14. In short, the UGC does make decisions and determinations independently of the Government, although in doing so it may take into account the Government advice on manpower projections, and the inherent difficulty of complying with such advice, into account. This is borne out in the specific instances that are outlined below.

EMB's Role

15. The process by which the EMB plans and transmits its manpower requirements to UGC involves numerous individuals⁴³¹:-
 - (1) The Higher Education Division (Branch 1, EMB) is the interface with the UGC. Upon its receipt from the UGC of a request for the Administration's advice, Higher Education Division sends out a request to all Government bureaux and departments, including EMB which is responsible for advising on student numbers for education and teacher education.
 - (2) Professional Development and Training (Branch 3, EMB) will seek the views of all other divisions within EMB including:
 - (a) Statistics Unit for projections as to student population and teacher supply and demand;
 - (b) Curriculum Development Institute (one of the 2 divisions of Branch 5, EMB) for advice on demand for individual KLAS; and

⁴³⁰ Stone, Day21/50:16-51:18. [286]

⁴³¹ Law, Day29/157:1-160:14. [287]

- (c) Other branches and divisions for any policies that may have manpower implications.
- (3) Professional Development and Training Division (PDT, Branch 3, EMB) will also write to the Quality Assurance Division (the other division of Branch 5, EMB) for student numbers for pre-primary education, i.e. ECE places.
- (4) The projections would then be compiled⁴³², after which the Principal Assistant Secretary of PDT would pass the information to the Deputy Secretary of PDT. It would then be passed to Mrs. Law for endorsement. As the entire exercise was technical, Mrs. Law would not go through all of the figures with them since⁴³³:
- (a) she trusted her staff to do their job properly; and
- (b) if policy steer had been required before they started to crunch numbers, this would be requested from Mrs. Law before they had begun the entire exercise.
- (5) SEM would then submit the broad planning parameters and specific manpower requirements to CE in Council for approval before sending the Administration's advice the UGC.
16. It is also important to note that 2004/05 was the first time the KLA methodology was used, and when detailed figures along those lines were provided to the UGC by the EMB⁴³⁴. In relation to this, SG/UGC acknowledged in his evidence that⁴³⁵:

⁴³² Dr. Lai in his 2nd Witness Statement has made inter alia an allegation as to the status of the methodology used to reach the projections [W2/206/§§5-7]. Quite apart from the fact that this is irrelevant to the question of whether there was any interference or meddling with the calculation process, neither this allegation, nor indeed any other portion of the said witness statement was put to Mrs. Law, in spite of an indication given on behalf of Prof Morris and Prof Luk that this would be done [Law, Day31/96:12-16, **[288]**]. Any express or implied allegations made therein against Mrs. Law should be disregarded as she has not been afforded the opportunity of responding to them. As was stated by Peter Smith J. in *EPI Inc v Symphony plc (ChD)* [2005]1 WLR 3456 at 3471A-B: "... I regard it as essential that witnesses are challenged with the other side's case. This involves putting the case positively. This is important for a judge to enable him to assess that witness's response to the other case orally, by reference to his or her demeanor and in the overall context of the litigation. A failure to put a point should usually disentitle the point to be taken against a witness in a closing speech."

⁴³³ Law, Day29/159:21-25. **[289]**

⁴³⁴ Law 4th [W2/151/§§157-160].

⁴³⁵ Stone, Day 22/38:23-41:14 **[290]**

- (1) the EMB would allow flexibility as to KLAs;
- (2) the UGC had persuaded the EMB to adopt a more flexible attitudes with regard to KLAs; and
- (3) that the EMB might have well had reasons for making certain decisions which might not apply or be visible to the UGC.

Areas where EMB has no input

RPG Courses

17. While HKIED had not been allocated any RPg places, SG/UGC confirmed in evidence that this was a policy of the UGC based on HKIED's role statement that it should focus on teaching but not research⁴³⁶. As it is for UGC (and not EMB) to allocate RPG places to the institutions, this issue had nothing to do with the EMB, which in any event did not recommend any cut for RPG for the triennium as set out in the Start Letter⁴³⁷.
18. There is therefore *no* question of HKIED being targeted by EMB vide allocation or non-allocation of RPG places, as has been alleged by Prof Morris.⁴³⁸

Joint English programme with LU

19. Dr. Lai complained that the HKIED had contributed all of its FYFD places towards the joint programme with LU⁴³⁹. However, under cross-examination by Benjamin Yu, S.C. it emerged that this complaint could in no way be blamed on the EMB:

⁴³⁶ Stone, Day21/17:9-19. [291]

⁴³⁷ [MLB/3/15].

⁴³⁸ Morris, Day 8/60:10-72:2. [292]

⁴³⁹ Lai, §21 [W1/20/199-200].

- (1) Dr. Lai agreed that the documents clearly indicated that the final allocation had been decided by UGC⁴⁴⁰.
 - (2) Dr. Lai had not previously seen a letter from the UGC stating that they understood that LU had alerted HKIED to the changed numbers in March. In any event he had not been involved with the discussions with Lingnan University, and no-one involved in them had either informed him of such or terminated the negotiations⁴⁴¹.
20. In his evidence, SG/UGC also confirmed that the decision to allot the 15 places to LU was a UGC decision and that there was no input from EMB at all. Therefore, whether HKIED was the “only loser” from the programme is therefore not a matter that can be blamed on the EMB⁴⁴². See also the extract of the letter from C/UGC above⁴⁴³.

Areas where EMB has some input

Articulated places for associate degree holders

21. Unless there is strong policy justification, articulated places would normally *not* be allocated to those areas or courses which would have an impact on manpower planning. These areas or courses include teacher education, doctors, nursing, allied health profession and lawyers (see as an example, EMB’s advice on manpower projection provided to UGC dated 20 January 2004⁴⁴⁴). If otherwise, the initial manpower planning advices given to UGC by EMB would not be properly reflected. For the 2005/08 triennium, other than teacher education, there was also *no* allocation of articulation places to disciplines and professions such as medical doctors, allied health professions, lawyers. This applied across the board to all other teacher education providers, in other words, none of the 4 TEIs are allocated with senior year places in the aforesaid disciplines, and this policy

⁴⁴⁰ Lai, Day 19/46:16-47:7. [293]

⁴⁴¹ Lai, Day 19/47:7-50:12. [294]

⁴⁴² Lai, Day 19/126:14; [295] Stone, Day 21/17:20-18:22[296]; 59:4-11[297]; Day 22/82:20-84:11[298].

⁴⁴³ [U2/379].

⁴⁴⁴ [EMB3/63/244].

was *not* targeted at HKIEd as alleged⁴⁴⁵. UGC had fairly and independently reviewed its policy pursuant to Prof Morris' request, as SG/UGC pointed out:

SG/UGC [Day22/45:12-46:11]

Q: Do you remember what was the outcome of this?

A: The outcome was that the UGC decided to turn down this request.

Q: Turn down whose request? Prof Morris' request?

A: Yes.

Q: Although you were sympathetic to him?

A: Yes.

Q: Was it because the EMB did not give the okay? Because it says there, "I think we should clearly get EMB's OK ..."

A: Yes, that was one of the factors that we took into consideration.

Q: The main factor, no doubt, because you had sympathy?

A: Well, I think this shows that the UGC is working. The UGC does what it thinks it should do. There was a paper which we submitted to the UGC, which I presume is in our bundle, and which this issue was ventilated. One of the factors that we took into account and I agree with you, it was one of the key factors, was that the EMB did not wish to see further supply in this KLA. But there are other aspects. If you wish to turn to the detailed document, you will see we considered quite a number of issues, some of which were pluses, sympathy, if I can say, some of which were minuses and of the key ones was EMB's views.

Q: As far as you and Dr Lam were concerned, it seems to be that you took the view you both had sympathy and that you could review the decision because it was your earlier decision?

A: And that's what we did. We reviewed the decision.

The point that UGC took EMB's view into account is therefore neither here nor there. It exercised a discretion open to it, and reached an independent view on the matter.

⁴⁴⁵ Morris, Day 8/72:6-76:7[299]; Lai, Day 20/140:5-141:24 [300]; Stone Day 21/16:15-17:8 [301]; Day22/46:25-47:14 [302].

FYFD places for 2005/2008 triennium

22. The documents indicate that this decision was made by the following process:
- (1) An internal EMB memo dated 13 October 2003 was sent out setting out its initial advice on specific manpower requirements on teacher education⁴⁴⁶. This was passed to UGC on an informal basis. However as the formal advice was only received by the UGC later, it had to rely to a large extent on this informal advice⁴⁴⁷.
 - (2) The UGC's TESC Ad-Hoc Sub-Group raised on 7-8 January 2004 its concern at the "drastic increase" this entailed⁴⁴⁸.
 - (3) Pending the Administration's formal advice on manpower requirements, by a letter dated 14 January 2004⁴⁴⁹, C/UGC wrote to Prof Arthur Li setting out her concern on the proposed staggered increase in the FYFD places for teacher education as set out EMB's informal advice. Given the pre-fixed total number of 14,500 FYFD places for all institutions, this would have meant a significant reduction in FYFD places for other disciplines⁴⁵⁰, most notably a need to move an extra 210 FYFD places to education for the year 2007/08⁴⁵¹. C/UGC thus stated expressly that she was "most uncomfortable with the notion that the UGC should rob Peter to pay Paul for this activity at this time", in that the UGC was concerned that it would be unfair for other institutions which did not provide teacher education⁴⁵². C/UGC also made it clear that the UGC needed to issue the start letter as soon as possible due to time constraint.

⁴⁴⁶ [U2/48/81-85]; [EMB3.1/170]

⁴⁴⁷ Stone, Day21/.73:4-74:17[303].

⁴⁴⁸ [U2/107]

⁴⁴⁹ [EMB3.1/239]; [U2/151-154]

⁴⁵⁰ Lai, Day 20/98:16-100:2 [304]; [EMB3.1/240]

⁴⁵¹ Stone, Day21/88:18-22[305].

⁴⁵² Stone, Day21/89:24-90:3 [306].

- (4) In response, Prof Arthur Li wrote in manuscript to his staff that he would like a counter-proposal from the UGC⁴⁵³. At the time, Prof Arthur Li would have realised that these figures would benefit HKIEd, it being the main provider of primary education training in Hong Kong. It was in that context that he punned that there was a need to “rob Peter to pay Paul (Morris), but not too much” and asked UGC for a counter-proposal⁴⁵⁴. As has already been explained in the section on UGC’s role and treatment of EMB’s advice above, this sort of negotiation between UGC and EMB is far from abnormal. Indeed, UGC should even be expected to raise these issues given its role, as it did in this case.
- (5) In the meantime, given the urgency of the situation, by a letter dated 20 January 2004⁴⁵⁵, Prof Arthur Li gave the UGC its formal advice on manpower requirements, which were based on its prior advice. In particular, the EMB advised that FYFD places of about 1,330 and 1,030 should be allocated at the primary and secondary level respective for teacher education⁴⁵⁶. The next day (21 January 2004), UGC issued the start letter incorporating the said advice⁴⁵⁷.
- (6) It then seems that EMB and the UGC discussed UGC’s concerns and by a letter dated 13 February 2004, Prof Arthur Li replied to C/UGC stating that, after taking on UGC’s concern and advice, EMB agreed to *inter alia* “evenly spread the FYFD places at 700 per annum” and to “shift some of these places from Chinese Language to other KLAs”⁴⁵⁸. A revised allocation to reflect such changes was also attached to the letter⁴⁵⁹. It was only as a result of these changes that the FYFD places for BEd primary places were reduced from 1,330 to 1,050, which still represented an increase over the previous year.

⁴⁵³ [EMB3.1/239]
⁴⁵⁴ Li, Day33/179:14-181:21[307]; [EMB3.1/239]
⁴⁵⁵ [U2/56/155]
⁴⁵⁶ [U2/56/160]
⁴⁵⁷ [U2/57/170-184]
⁴⁵⁸ [EMB3.3/258-260]
⁴⁵⁹ [EMB3/261]

- (7) UGC therefore issued the so-called 2nd Start Letter dated 17 February 2004⁴⁶⁰.
23. Therefore, as outlined above, EMB had only advised on the overall FYFD places (which were in fact increased from the roll-over year) that were included in the 1st Start Letter. In doing so, it had in fact initially recommended a significant increase in FYFD places for teacher education. Most notably, the proposed increase in primary FYFD places to 560 in 2007/8 (from 287.5 in 2004/5) would have benefited the HKIED⁴⁶¹ (secondary FYFD places were reduced largely due to demographics⁴⁶²). Furthermore, it was Mrs. Law who had in October 2003 insisted that the original figure of 1,330 FYFD places be put to the UGC for consideration⁴⁶³.
24. It was only upon receipt and discussion of the UGC's contrary advice and objections that the proposed increase in primary FYFD was reduced⁴⁶⁴. The evidence clearly indicates that this decision was not reached as a result of any untoward action on behalf of EMB⁴⁶⁵. Indeed, due to UGC's advice, the number of BEd(Sec) places had to be increased from 1,030 to 1,050, despite the declining population, as there was a need to even out the allocation of BEd (Secondary) places across the 3 years of the triennium⁴⁶⁶ and as there had already been a dip in the FYFD Secondary places from the 2004/2005 figure⁴⁶⁷.
25. Moreover, the allocation of these places amongst the different teacher education institutions (including the decision to reduce HKIED's FYFD secondary places and increase HKIED's FYFD primary places in English) that led to the "loss" of HKIED's 25 FYFD places was a decision made entirely by UGC based on various considerations (such

⁴⁶⁰ [U2/192-193]

⁴⁶¹ Lai, Day 20/100:3-101:10 [308]; Prof Li, Day33/179:14-181:21[309]; [EMB3.1/240]

⁴⁶² Lai, Day 20/95:3-8 [310]; [EMB3.1/240].

⁴⁶³ [EMB3.1/Tab55/175]; Law, Day31/148:14-150:14 [311].

⁴⁶⁴ Lai, Day 20/103:16-104:4 [312].

⁴⁶⁵ Cheung, Day 25/19:9-21:2 [313].

⁴⁶⁶ Law 4th [W2/160/§201]; [EMB3.1/257-1]; Compare figures at [U1/361] with [U2/193]; SG/UGC also commented that the final allocation of figures was "somewhat more rational", Stone, Day 21/13:4-10[314].

⁴⁶⁷ Lai, Day 20/105:23-106:10 [315]; [U2/107]; [U2/152].

- as the need for English language provision) without any input from the EMB, as indicated by both the documents and the oral evidence⁴⁶⁸.
26. In light of the above, and notwithstanding the fact that Counsel for Profs Morris and Luk never dealt with them orally, the late criticisms made by Dr. Lai in his 2nd Witness Statement⁴⁶⁹ miss the point entirely. The decision to reduce Primary FYFDs was made as a result of UGC's advice and emphasise, if anything, the EMB's willingness to deviate from its original manpower projections as originally compiled if there are cogent reasons to do so. There is also nothing unusual or improper in the idea that the final numbers may be affected by a number of factors, including policy, other than mere supply and demand. Indeed, this latest complaint is particularly bemusing given that his 1st Witness Statement contains the entirely irrelevant complaint that EMB's forecasts were based on a "minimalist approach". It also serves to indicate just how partisan Dr. Lai really is when it comes to giving evidence..
 27. The inevitable conclusion is that the decisions on FYFD places for the 2005/2008 triennium cannot in any way be seen as an attempt by EMB to disadvantage the HKIED.
 28. As an aside, a similar complaint was made by Dr. Lai as to the HKIED's alleged "loss" of 43 FYFD places for the 2004/2005 roll-over year⁴⁷⁰. However, this complaint was clearly a UGC decision⁴⁷¹. Furthermore, it was also patently churlish given C/UGC's comments (as outlined above) that institutions do not "own" any FYFD places, and SG/UGC's confirmation that the UGC had had "considerable difficulty prising a large number of FYFD places out of the other institutions when the HKIED was upgraded to award degrees in the 2001/04 triennium."⁴⁷²

In-service training - Professional upgrade courses (PUC)

⁴⁶⁸ Morris, Day8/77:22-73:13 [316]; Lai, Day 19/36:6-38:10 [317]; Day 20/128:8-15 [318]; [U2/310/§(d)]

Stone, Day 21/52:16-54:18 [319]; U2/83/327 at 331; U2/84/334 at 346.

⁴⁶⁹ Lai, 2nd [W2/207-210/§§9-17].

⁴⁷⁰ Lai, 1st [W1/196/§9]

⁴⁷¹ [U2/379]; Stone Day 22/103:5-14 [320].

⁴⁷² Stone, Day21/88:25-89:3 [321]. See also Day 22/103:9-14 [322].

29. Back in 1999, as a result of streamlining various types of professional upgrading courses, HKIED had initiated the idea of phasing out the PUC as UGC-funded courses. This idea was in principle supported by the UGC Secretariat⁴⁷³. The idea at the time was that the HKIED could focus more on degree or sub-degree courses⁴⁷⁴. Indeed, cuts had already been made to PUC numbers between the 1998/01 and 2001/04 triennia⁴⁷⁵.
30. In 2004, the question was raised as to whether PUC places should continue to be reduced. EMB (in accordance to steer given by Mrs. Law) recommended keeping these courses within UGC funding, with improvements in the quality, and in reduced numbers, in order to maintain their partnership with HKIED⁴⁷⁶. The decision to reduce PUC places was entirely justified by supporting data showing the under enrolment of some courses (as accepted by HKIED)⁴⁷⁷ and demand for training in other areas, which are not the strength of the HKIED. Both of these factors were considered by the EMB⁴⁷⁸.
31. Given this background, it can hardly be said that the reduction to 350 places in the triennium was an attempt by EMB to disadvantage HKIED, particularly in light of the fact that EMB encouraged HKIED to keep running some of the courses despite the latter wishing to close them⁴⁷⁹, and the UGC's lack of interest in these courses⁴⁸⁰. Most importantly, the final decision was made without any regard to the actual impact on the HKIED⁴⁸¹.
32. Some attempt was made to make something out of the lack of available minutes or paperwork related to this decision. However, it was pointed out by Mrs. Law that the importance attached to this decision was entirely retrospective, and that there was no controversy

⁴⁷³ Notes of 7th Co-Ordination meeting between Education Department and HKIED at EMB11/179 §5, EMB11/183, Notes of Meeting between HKIED and EMB on 31 March 2003 EMB11/191 at 193/§4(a)(iii); Table at EMB11/205; Stone, Day21/67:2-12 [323].

⁴⁷⁴ Lai, Day 20/135:3-8 [324].

⁴⁷⁵ Law, Day30/83:19-21[325].

⁴⁷⁶ Law 4th §203 [W2/160]; [EMB3/50/152-154]; [EMB3/54/170]; Law Day29/161:16-162:15 [326].

⁴⁷⁷ Lai, Day 19/80:15-18 [327]

⁴⁷⁸ Law, Day30/84:19-85:5[328].

⁴⁷⁹ Lai, Day 20/134:21-135:2 [329].

⁴⁸⁰ Stone, Day 21/16:3-14 [330].

⁴⁸¹ Law, Day30/86:11-87:7[331].

over the matter at all⁴⁸². This rings true given the trend of moving away from PUCs (as outlined above), and the fact that HKIED raised no objection to the reduction in PUC places⁴⁸³, which on the whole appears to be more of an afterthought rather than a serious complaint.

33. Further, the reduction in PUC numbers had nothing to do with and would never have been a matter cropping up in Prof Li's mind. The Commission is also reminded of the perfectly sensible reasons he gave as to why he would not and did not go through each and every such figure:-

Prof Li Day 34/138:24-140:3

Q: Perhaps let's have a look at that, EMB 3, page 243. This is the letter that you sent to Dr Alice Lam and it's dated 20th January 2004?

A: Yes.

Q: That letter contains the Administration's advice which you would expect to be reflected in the Start letter, to start the process; is that right?

A: Yes.

Q: The recommendations that you made or the advice that you gave to the UGC would have been cleared by the PSEM and yourself; is that right?

A: Yes.

Q: You would be aware that there was a reduction in the PUC numbers, for example?

A: I would not have been that specific, Mr. Yu, because this is parameters to UGC which covers all the institutions, all eight of them, and it's not done on a particular institution, it's done on a global basis, if I could use that term. So that I did not look through every single figure, every check, which course from the PUC has been removed and which course has been reduced, no, I did not do that. But all the numbers would have been done by my subordinates in the bureau and then we send this out to UGC.

⁴⁸² Law, Day31/12:24-13:7[332].

⁴⁸³ Morris: Day8/79:14-99:9 [333]; Lai Day19/78:24-79:14 [334].

I have to stress here, once again, that these are indicative numbers from the Administration and these numbers are open for negotiation, it has been open for negotiation in the past and it's been open for negotiation ever since. So it's not cast in stone, even though it was sent out by Michael Stone.

34. In that regard it should also be noted that the document in question was 10 pages long and covered numerous other industries and matters, not just teacher education.

FT PGDE Places for 2005/2008 Triennium

35. Dr. Lai complained about the initial advice to set the student numbers for KLAs such as Art and PE, to 0⁴⁸⁴. However, the Administration's initial advice was based on manpower projections and was subject to negotiation. Further, as is clear from both the Allocation Letter and Lai's own evidence, the number of PGDE places was eventually modified by UGC such that some numbers were restored⁴⁸⁵.
36. Faced with the facts, Dr. Lai made an attempt to characterise the UGC's adjustments as being "minor". However, he eventually admitted that the difficulty of restarting a programme that had been closed down, as compared to expanding one that has been downsized, spoke for itself⁴⁸⁶.
37. Furthermore, the fact of the matter was that both the Core Group and the UGC's Teacher Education Subcommittee (TESC) were able to take into account factors other than manpower projections, which evinced their willingness to depart from the EMB's thinking⁴⁸⁷. In any event, there has never been any indication that the EMB would have refused to listen to any submissions on the part of either UGC or HKIEd if extra consultation were required and factors other than manpower had to be taken into account. Indeed the discussion as to

⁴⁸⁴ [U1/361].

⁴⁸⁵ [U2/350 at 354-355]; [E2/130]

⁴⁸⁶ Lai, Day 20/111:3-112:8[**335**].

⁴⁸⁷ Lai, Day 20/110:20-111:2 [**336**].

places available for the 2008/09 rollover year (as outlined below) indicates that the EMB is willing to consider other concerns.

38. Dr. Lai's complaints as to the distribution of Secondary FT PGDE places also lack merit. The UGC had adequately proffered a reason for the decreased figures⁴⁸⁸, and the Secondary sector was not HKIEd's area of strength and hence the decrease figures in this respect will not impact on HKIEd in a way as alleged. Furthermore, UGC had decided to compensate Teacher Education Institutions in general by allocating further PT PGDE places, with the actual allocation of those being clearly determined by the UGC and not the EMB⁴⁸⁹. This decision was also reflected in the Allocation Letter⁴⁹⁰.
39. Finally, the UGC's allocation of FT PGDE places to each institution was based on critical mass and cost-effectiveness. In this regard, the evidence clearly demonstrated that at least one institution other than HKIEd had suffered a significant reduction in places, the rationale being that its course was less-strong than those of the others⁴⁹¹.
40. In the circumstances there was and is clearly no basis to the allegation that HKIEd was unfairly targeted in terms of FT PGDE places for the 2005/08 triennium.

Part-time student numbers

41. Prof Morris argues that if the cuts were made due to demographic changes, they should not have affected those part-time course student numbers as set out below, since these courses are taken up by in service teachers⁴⁹². However, the fact is that he is wrong in saying that there were cuts in these programmes, alternatively, there are good justification and reasons for the cuts:
 - (1) Mixed mode programme: There was in fact an increase from 478 headcounts in the 2004/05 roll over year to 501 headcounts in the 2005/08 triennium: see Start Letter for 2004/05⁴⁹³ and

⁴⁸⁸ Lai, Day 20/112:9-113:21[337]; [U2/308-9 §9]
⁴⁸⁹ [U2/309 §§9-10]
⁴⁹⁰ [U2/355 §§15-16]
⁴⁹¹ Lai, Day 20/129:2-130:24 [338]; [U2/310 §14]
⁴⁹² Morris, Day 8/100:16-18 [339].
⁴⁹³ [U1/16/197-204]

Start Letter for 2005/08⁴⁹⁴. This clearly cannot be seen as an “attempt” by EMB to “hurt” HKIED. Prof Morris eventually conceded under cross-examination that this was *not* an example of how HKIED had been allegedly disadvantaged⁴⁹⁵.

- (2) Part-time PGDE: There was in fact a very minimal change from the 195 FTE places for 2004/05 to the average of 181.6 FTE places for the 2005/08 triennium. If one takes the final year of 2007/08, the figure in fact returned to 195 places: see Start Letter for 2004/05⁴⁹⁶ and Start Letter for 2005/08⁴⁹⁷. This demonstrated that there has been a careful manpower planning with a varying change of part-time PGDE places over the triennium years, but there has not been any significant reduction of places which would have any practical or real impact on HKIED. In the premises this simply cannot be an example of the HKIED having been targeted by EMB as was claimed by Prof Morris⁴⁹⁸. In fact, the TEIs complained that they had difficulties filling these places. Taking into account such complaints, flexibility was therefore provided to shift these places to full time for KLAs in need
- (3) Add-on programmes: There was no significant effective change of places – HKIED in fact found it unable to fill the 2-year full-time BEd programme and therefore suggested to UGC to convert it to a 4-year part time program. Thus, instead of 40 places for the 2 year programme in 2004/05, 60 places were allocated to HKIED for each of the 3 years of the 2005/08 triennium for the 4 year programme⁴⁹⁹.

FYFD BEd Art, Music, PE places for 2008/09 rollover year

42. An allegation was made by Profs Morris and Luk, and also pursued in cross-examination of Mrs. Law, that EMB had recommended the closing down of the BEd course in Art, Music and PE since the roll over year of 2008/09⁵⁰⁰. They and other witnesses sought to

⁴⁹⁴ [U2/57/170-184]

⁴⁹⁵ Morris, Day 8/100:22-101:8 [340].

⁴⁹⁶ [U1/16/197-204].

⁴⁹⁷ [U2/57/170-184].

⁴⁹⁸ Morris, Day 8/106:8-107:4 [341].

⁴⁹⁹ Morris, Day 8/107:22-111:4 [342].

⁵⁰⁰ See *inter alia* Luk Day15/70:11-12 [343].

- exaggerate the impact of this by describing the process of reclaiming these places as a “prolonged fight”⁵⁰¹. However, the allegation was entirely misconceived, and possibly misleading, and the truth is much more prosaic.
43. Firstly, insofar as the BEd course for Art, Music and PE for 2008/09 year is concerned, EMB’s initial suggestion of allocation 0 student number to this was based on the projection that there would not only be no demand for but in fact an oversupply of teachers in these subjects following the double cohort year in 2011/12, due to the change to the 3-3-4 academic structure⁵⁰².
44. Since 15 November 2006, and well before this Inquiry was commissioned, the HKIEd knew that EMB’s initial suggestion was clearly to provide no first-year intake in these subject *only* for the 2008/09 year but *not* to close down the entire course or department, whether in HKIEd or otherwise: see Notes of Meeting between HKIEd and EMB (and attended also by UGC representatives) on 15 November 2006⁵⁰³. In other words, EMB clearly only wished to facilitate a 1-year transition period, after which the intake of first year students would be resumed⁵⁰⁴.
45. The Commission may also consider it surprising – and well worth remembering when dealing with Prof Luk’s evidence – *why* he insisted in his oral testimony that EMB’s plan to reduce these FYFD KLA numbers to “0” meant “*closing down the departments*” despite the fact that he was at the very meeting where it was clarified that it was not EMB’s plan to stop the programmes beyond the roll-over year.⁵⁰⁵
46. Secondly, from EMB’s point of view, its suggestion was but a “wish list”, and that past experience had showed that if UGC or any tertiary institution had difficulties, they would come back and the matter could be further discussed⁵⁰⁶. This was indeed what happened in this particular case, after which EMB took on-board advice from UGC and

⁵⁰¹ Lai, Day 20/112:8[344].

⁵⁰² Law, 4th §209 [W2/161-162].

⁵⁰³ [U8/175 at 177 §7]

⁵⁰⁴ Law, Day31/111:15-113:7[345].

⁵⁰⁵ [U8/175] cf. Luk Day15/70:11-12 [346].

⁵⁰⁶ Law, Day31/111:1-5 [347].

the comments made by HKIEd and CUHK, and agreed to provide places for BEd in Art, Music and PE for the 2008/09 roll-over year as well: see UGC’s letter to EMB dated 5 March 2007⁵⁰⁷ and EMB’s letter to UGC dated 16 April 2007⁵⁰⁸. Clearly, SG/UGC’s description of this as being merely the “normal process” occasioned by an institution expressing its difficulties, and the UGC responding to its concerns and beginning dialogue⁵⁰⁹, is more accurate than Dr. Lai’s emotive and self-serving description of the situation. Similarly, the suggestion made in cross-examination of Mrs. Law that the decision was “unprecedented”⁵¹⁰ was entirely incorrect.

47. Furthermore, the student number allocation for the 2008/09 roll-over year and the 2009/2012 triennium is still an ongoing process. A firm decision has yet to be reached by the UGC⁵¹¹.
48. Thirdly, an attempt was made by Professor Phillip Moore to establish that Susanna Cheung and/or Steve Lee had informed him around 26 January 2006 that her proposal for the 2008/09 rollover year did not include any changes in the student numbers of the HKIEd, and therefore that the HKIEd Senior Management was therefore very surprised when the recommendations for the Art/Music/PE KLAs for that year were finally announced. Prof Luk also seems to have placed some reliance on this incident in his testimony⁵¹². It is difficult to see how this could be of any relevance save to exaggerate the non-existent impact of a misunderstood “decision” (which as outlined above, was still an ongoing process) , but in any event the truth that emerged under cross-examination was much more staid:-
 - (1) Prof Moore had merely inferred that there would be no such changes⁵¹³. However, what Susanna Cheung must have meant by “no significant changes” in student numbers was that there would be no significant changes in respect of the overall student numbers for teacher education⁵¹⁴.

⁵⁰⁷ [U8/191-193]

⁵⁰⁸ [U8/194-195]

⁵⁰⁹ Stone, Day 21/20:8-21:2 [348].

⁵¹⁰ Law, Day 31/111:22-112:4 [349].

⁵¹¹ Stone §12 [W1/221]

⁵¹² Luk, Day15/69:21-70:12 [350].

⁵¹³ Moore, Day 23/202:23-206:19 [351]; [W1/Tab5/18-1]

⁵¹⁴ Cheung, Day25/61:7-16 [352].

- (2) The fact is Ms Cheung had prior to that conversation previously indicated by way of a memo dated 10 January 2006 that there would indeed be changes in the across-the-board figures for the PE and Art KLAs⁵¹⁵.
- (3) Ms Cheung would not have said to Prof Moore that she had submitted a proposal that does not change HKIED's numbers, especially since her proposal was an across-the-board recommendation⁵¹⁶.

In the circumstances it seems more likely than not that Prof Moore's e-mail comments were the result of his having misinterpreted his conversation with Susanna Cheung.

49. Finally, a belated attempt (premised yet again on the flawed assumption that the EMB's intention was the "deletion" of the HKIE's BEd Secondary programme) was made by Dr. Lai in his 2nd Witness Statement to resurrect this ground, who made the somewhat puzzling accusation of "double standards" on the part of the EMB⁵¹⁷. It is hard to see how any of the matters outlined therein are relevant to this Inquiry given the aforementioned matters, and especially given that the merits of the underlying methodology are totally irrelevant. In any event, Dr. Lai's new complaints only relate to the 3 core KLAs (in relation to which no complaint has been made) rather than the other KLAs (which are the substance of his, and Prof Morris and Luk's, complaints) and are therefore neither here nor there.
50. In the premises there is and therefore never has been any basis for the suggestion that Mrs. Law, Prof Arthur Li, or the EMB somehow contrived to reach the "0" quota figures, let alone that such contrivance was made with the intention of targeting/disadvantaging the HKIED. It follows that the allegation that this is an example of the EMB having somehow targeted HKIED in order to disadvantage it is utterly groundless.

⁵¹⁵ [EMB4/281-286, especially 283]; Moore, Day 23/206:21-209:1[353]; Cheung, Day25/50:6-1:19 [354].

⁵¹⁶ Cheung, Day25/52:2-21 [355].

⁵¹⁷ Lai 2nd, [W2/210-211/§§18-22].

2+2 Courses

51. Dr. Lai has attempted to argue that the EMB's fondness for 2+2 degrees was an example of how it could wield influence over the HKIEd, the implication being that this did not favour it due to its inability to award them⁵¹⁸. He gave the example in his evidence of how the HKIEd had allegedly lost numbers in its Secondary Level BEd (Lang) programme (a matter only clarified in his 2nd Witness Statement), supposedly at the expense of favouring 2+2 programmes⁵¹⁹.
52. The simple answer to this is that for reasons already canvassed, the allocation to this course was a UGC decision, which is evident from the oral testimony⁵²⁰ and the relevant documents as set out below. Indeed, given what the UGC proposed, HKIEd actually stood to gain FYFD places from collaborative programmes with other institutions:-

UGC TESC for meeting on 20 April 2004 [U2/310]

"PROPOSED ALLOCATION FYFD Level

13. In light of the above, the Secretariat has attempted to redistribute TE numbers to be offered by individual TEIs at the FYFD level, with a view to meeting the Administration's anticipated demand... In the main, we propose-

...

(d) to reduce HKIEd's FYFD requirement from the 2004/05 level of 493 to 453 in 2005/06, 433 in 2006/07 and 2007/08 – but see also (e) below. *This is mainly due to the fact that at the secondary level, with the exception of English Language (which is not HKIEd's area of strength), demand for TE places at the will (sic) have to drop...*

(e) to return to HKIEd 15 FYFD places in 2005/06 and 35 in 2006/07 and 2007/08 to support its collaborative programmes with CityU, LU and PolyU. *HKIEd's institutional FYFD will as a*

⁵¹⁸ Lai, Day 19/34:2-35:7 [357]; Lai 2nd [W2/212/§25].

⁵¹⁹ Lai, Day 19/35:25-36:5 [358].

⁵²⁰ Stone, Day21/50:16-51:18 [359].

result become 468 for all three years of the new triennium...” (emphasis added)

53. From the above, it is clear that at least one plausible explanation for UGC’s decision to decrease places for BEd(Lang) – if one is needed – would be that was a Secondary level programme, which in any event is not one of the HKIEd’s stronger areas. The aforementioned UGC decisions were of course eventually reflected in the Allocation Letter of 7 May 2004⁵²¹.
54. In any event, the complaint that BEd programmes are being “sacrificed” for 2+2 programmes must be put into context, since the recommendation that HKIEd take steps towards facilitating 2+2 and joint degrees is nothing new. Indeed, the HKIEd had had several years to prepare for it, and had taken some (though arguably not enough) steps towards doing so:
- (1) HKIEd had been singled out as early as March 2002 in the Sutherland Report – which had been adopted by ExCo in November 2002⁵²² – as a prime example not only for collaboration, but specifically for the implementation of 2+2 programmes⁵²³.
 - (2) Subsequent to that, Prof Arthur Li had emphasised in LegCo on 12 March 2003 the importance of HKIEd engaging in 2+2 degrees and links with other institutions in order to recruit more academically able students⁵²⁴.
 - (3) SG/UGC mentioned that institutions such as the HKIEd had co-operated with what was clearly a result of the EMB’s decision to view 2+2 and double-degree programmes as the way forward⁵²⁵. Indeed, it is not in dispute HKIEd offered 2+2 degrees with LU and HKU⁵²⁶. The fact that HKIEd’s 2+2 programme with LU may have resulted in numbers being taken

⁵²¹ [U2/350 at 352-353]

⁵²² Li, Day 34/133:16-18 [360].

⁵²³ [EMB5.1/54-55 §§6.16-6.21]

⁵²⁴ Li, Day 34/31:6-33:9 [361]; [EMB14/1304].

⁵²⁵ Stone, Day 21/94:23-95:1 [362].

⁵²⁶ Stone, Day 21/55:15-56:11[363].

from its own allocation is (as already covered above) no fault of the EMB.

See also Chapters 13 to 14 of these Submissions (especially Chapter 14) for more detail on the topic of HKIED and its and the EMB's attitude towards collaborative degrees and programmes.

55. Moreover, contrary to the evidence given by Profs Morris and Luk, there can be no suggestion that the HKIED was therefore being forced into merger or being made “unviable” by this focus on 2+2 and/or double-degree programmes. As has been repeatedly emphasised by Prof Arthur Li in his evidence, the EMB was well-aware that the HKIED would face difficulties if the EMB were to insist on full-scale implementation of 2+2, which is why it did not do so⁵²⁷. Even on 17 December 2005 Prof Arthur Li had expressed his conciliatory attitude towards what was perceived to be HKIED's relative lack of progress in moving towards the preferred mode of 2+2 degrees, and as an indication of this was willing to ring-fence resources in order to prevent any redundancies that might result from such a move⁵²⁸.
56. The question of merger is, of course, dealt with in more detail in subsequent parts of these submissions, but seen in context, Dr. Lai's complaint falls flat, and is also a good example of how HKIED senior management has focused on complaining and exaggerating about its lot and dealing with purported conspiracies (of which the student numbers are said to be a part), rather than taking proactive steps to move the HKIED forward in a changing world. This stands in sharp contrast to the proactive approach that was espoused by Dr. Thomas Leung from as early as the time of his appointment as Council Chairman in April 2003, and that is outlined elsewhere in more detail in these submissions:

Leung, Day 32/66:3-67:3

⁵²⁷ Li, Day 35/31:7-33:6 [364]; Day 37/157:18-158:5 [365].
⁵²⁸ [E2/244]; Stone, Day21/138:139 [366]

Q: At that time, did you see merger as one way out for the institution?

A: I saw actually working together with other universities as probably a very good way of actually expanding our capability and offering more different programmes to our students. I wasn't really thinking about a full merger, because I actually had never believed a full merger actually works. You know, I'm a management consultant. I know there is a McKinsey report actually that says 80 per cent of all mergers fail and the reason for their failure is because of the people and the organisation, so that's in the commercial world, but in universities, it would be more difficult.

Q: I don't mean necessarily full merger, Dr Leung, and when I asked you the last question, I was really thinking in terms of when you were trying to advance the interests of the Institute. At the time when you agreed to be appointed and you saw the difficulties that were facing the Institute, were you thinking at that time that one way of bringing about substantial changes and to get the institution through the difficulties, would be a very close collaboration or a loose kind of merger, some form of merger, with another university?

A: I must admit that was something that I had in mind, that's something that we should really actively explore, yes.

57. It should also be remembered that at around that time, Prof Morris also said in his 8 June 2003 e-mail to Thomas Leung from what he described as his “confidential personal account” that “With regard to the longer term picture, I agree with you that we have little choice but to pursue discussions on the merger prospects.”⁵²⁹

Conclusion

58. The evidence clearly indicates that:

- (1) a number of decisions were clearly not in EMB’s hands, and that where EMB had influence, they would adopt a flexible stance. This seriously undermines any allegation that Mrs. Law and/or Prof Li have improperly interfered in any way with the

⁵²⁹ [E2/274].

allocation of these numbers (of which there is in any event no evidence whatsoever), for there would be absolutely no point interfering if the numbers were negotiable at the end of the day;

- (2) Dr. Lai's criticisms are largely irrelevant or are premised on dubious grounds, while the partiality of his testimony raises doubts as to his objectivity.
- (3) It has already been demonstrated in relation to funding cuts that *Profs Morris, Luk and their associates will go to great lengths to blow matters entirely out of proportion*. This is also present in their approach to student numbers, but more troubling is their obvious eagerness to *portray every EMB decision in relation to the HKIED as an attack on it*, to the extent that they are totally unwilling to give the EMB the benefit of the doubt.

Executive Summary

- (1) *UGC generally makes decisions and determinations independently of the Government, although in doing so it may take into account matters such as Government manpower projections. The decisions it makes that are totally independent of Government interference include allocation of the student numbers per course to each teacher education institution.*
- (2) *UGC has in the past reverted to Government when either it or the institutions find the Government's advice untenable. In such instances, both the Government and UGC have at various times acceded to UGC and/or the Institution's demands.*
- (3) *The reductions in HKIED's student numbers (leaving aside ECE, which is dealt with separately) have not been made as an attempt by EMB to disadvantage HKIED. When studied closely, the claims turn out to be unsubstantiated by the evidence, stem out of a misconceived notion of the decision-making process, the Government's and/or UGC's true position, or are simply the result of the implementation of rational Government policies of which the HKIED has long been aware.*

CHAPTER 12

STUDENT NUMBERS II: EARLY CHILDHOOD EDUCATION, ALLEGATIONS OF GENERAL NEGATIVITY

1. ECE deserves its own chapter since there are 2 broad areas to be dealt with:
 - (1) the “0” figure for PT ECE courses in 2007/08 in the so-called 1st Start Letter; and
 - (2) how and why EMB officials made certain other decisions that may have affected the landscape of ECE provision, and why these were not targeted at HKIEd.

The ECE numbers for 2005/2008 triennium

2. Much time and energy has been spent during this Inquiry on the “0” figure for PT Certificate (Early Childhood Education) (PT C(ECE)) courses in the so-called 1st Start Letter. However it is now clear from the evidence that this figure was not the result of any threats to cut the HKIEd’s student numbers as allegedly made by Prof Li vis-à-vis Mrs. Law¹. Rather, it was the result of a miscommunication between 2 officers at working level within the EMB that went unnoticed at the higher levels due to divisions of responsibility.

The mistake

3. The process by which student numbers were compiled within the EMB has been outlined in Paragraph 15 of Chapter 11 above.
4. The main individuals concerned are:
 - (1) Sheridan SL LEE (“Sheridan”), who was at the time Chief Professional Development Officer (CPDO) of Professional Development and Training Division (PDT). PDT was Branch 3 of the EMB². Sheridan had worked for the Education Department before its merger with the EMB in January 2003, and took on this post upon the merger³. He was generally responsible for liaising with counterparts in

¹ As claimed by *inter alia* Prof Luk [W1/131-132].

² Sheridan Lee [W2/302/§§2-3]; Mrs. Law, Day29/157:12-159:12 [367].

³ Sheridan [W2/302/§3]

UGCs, teacher education institutions, and relevant EMB divisions on required teacher training provisions⁴.

- (2) Susanna SM CHEUNG (“Susanna”), Principal Assistant Secretary of PDT. She supervised Sheridan who was responsible for teacher training places among other duties. It was her division which was responsible for putting up collaborative proposals on teacher training places for consideration of her supervisor, Cheng Man Yiu (DS3, head of Branch 3) and Mrs. Law, the then-PSEM⁵.
 - (3) Miranda MH LIU CHAN (“Miranda”), who was at all material times the Senior Education Officer [Kindergarten and Support] (SEO/K&S) under the Quality Assurance Division (QAD). QAD was one of the two divisions of Branch 5, EMB. QAD provided manpower projection figures for pre-primary education (i.e. ECE) training places⁶.
 - (4) Andrew CS POON (“Andrew”), who was Miranda’s supervisor in the QAD, and the then-Principal Assistant Secretary (PAS) in the QAD. He had also come from the Education Department and had therefore only assumed that post from 1 January 2003⁷. His supervisor was Christopher Wardlaw (DS5, head of Branch 5)⁸, who in turn reported to Mrs. Law, the then-PSEM.
5. It is particularly important to remember, given that the Education Department and EMB had only merged in January 2003, that this 2003-2004 period was the first time Miranda and Sheridan had taken such a part in the UGC triennial funding exercise⁹.
6. Given the above context, we therefore begin with the series of e-mails exchanged between Sheridan (on behalf of PDT) and Miranda (on behalf of QAD) between August and October 2003¹⁰. They can be broadly summarised as follows:

⁴ Susanna [W2/63]

⁵ Susanna [W2/63]

⁶ Susanna [W2/68]; Mrs. Law, Day29/157:20-24 [368].

⁷ Andrew [W2/81/§§1.1-1.2].

⁸ Susanna, Day24/223:24-25; Day25/7:16-17 [369].

⁹ Miranda 2nd [W2/276/§6]; Sheridan [W2/302-303/§4]

¹⁰ In the procedural context, this is Paragraph 15(3) of Chapter 11.

- (1) On 5 August 2003, Sheridan wrote to Miranda setting out the 2004/05 roll-over year intake numbers and asked her to provide projected manpower requirements for the 2005/08 UGC triennium for teachers in ECE (kindergarten/pre-primary schools)¹¹.
- (2) On 22 August 2003, Miranda set out 3 points in an e-mail¹²:
 - (a) Provision of pre-service training places in ECE to be maintained at the 2004/05 level (“the 1st Point”);
 - (b) “about 100 in-service training places should be provided annually *from 2005 to 2008* to cater for untrained Chinese- and non-Chinese-speaking KG *teachers*, e.g. degree holders” (“the 2nd Point”); (emphasis added)
 - (c) “about 100 in-service C(ECE) training places should be provided annually *from 2003 to 2006* to train up all KG *principals* and child care supervisors.” (“the 3rd Point”) (emphasis added)

At the time, due to Miranda’s unfamiliarity with the process she had thought her section was only being asked to provide preliminary figures¹³. Furthermore, she did not specify whether C(ECE) or QKT was to be the programme used under the 2nd Point, her thinking being that this could be left to UGC/HKIED to decide as a matter of flexibility¹⁴.

- (3) On 3 October 2003 Sheridan asked Miranda to confirm a statement containing his summarisation of the 1st to 3rd Points¹⁵:
 - (a) 1st Point: This was essentially correct, however, Sheridan had made a mistake as to the number of places.
 - (b) 2nd Point: Sheridan had simply stated that “About 100 in-service training places should also be provided annually to cater for untrained KG *teachers*, including non-Chinese speaking KG teachers.” (emphasis added)

¹¹ [EMB8/56-57].

¹² [EMB8/55-56].

¹³ Miranda 2nd [W2/276/§6].

¹⁴ Miranda 2nd [W2/276-277/§§8].

¹⁵ [EMB8/55]

This was in substance correct, however, Miranda's original formulation had been that these places be provided "annually *from 2005 to 2008*" (emphasis added)

- (c) 3rd Point: He had used a formulation that a further 100 places should be provided in 2005/06 to complete training of KG *principals* as a follow-up to in-service C(ECE) training. This was later corrected by Miranda.

(4) Around 3 hours later, Miranda replied as follows¹⁶:

- (a) 1st Point: She corrected the mistake he had made as to the actual numbers.
- (b) 2nd Point: She made no comment on this as Sheridan's wording had been directly copied from her e-mail of 22 August 2003¹⁷ *save for the crucial point that it applied as to 2005-2008*.
- (c) 3rd Point: She re-worded this to read "As for the *in-service C(ECE) training*, a further 100 places each should be provided *in 2005/06 and 2006/07* to complete the training of all KG *principals* and child care supervisors." (emphasis added) It is noteworthy that this timeframe differed somewhat from her original 3rd Point in her letter of 22 August 2003. The implication was, however, that the training of all KG principals would be complete by 2007.

(5) Sheridan soon after sent a reply e-mail stating that the matter was "a lot clearer". However, he had overlooked the crucial "2005-2008" portion of Miranda's 2nd Point in 22 August 2003 (presumably because he had neglected to insert it into his October 2003 e-mail). As a result, Sheridan misinterpreted her e-mail of October 2003 to mean that¹⁸:

- (a) all the in-service training places outlined in the 2nd Point had to take the form of C(ECE) places; and
- (b) no more in-service training places would be required after 2006/07 as the policy targets to train up all serving *teachers and principals* would have been achieved by 2006/07.

¹⁶ [EMB8/54]
¹⁷ Miranda 2nd [W2/277/§10].
¹⁸ Sheridan [W2/304/§8].

It is therefore easy to see why Sheridan confused the 2nd and 3rd Points and eventually stated in the memo he had drafted for Susanna to Irene Young (PAS(HE)) that only 200 places were required per annum (100 for teachers, 100 for principals) up till 2006/07¹⁹.

7. The fact of the matter is therefore that the ECE places as originally recommended by Miranda would have been 200-200-100 (with the last year for training KG teachers only, the principals target having been achieved). *It was due only to the aforementioned misunderstanding on Sheridan's part that the recommendation became 200-200-0.*
8. Further, it should also be noted that while the Commission now has the benefit of testimony from both Miranda and Sheridan, this explanation is not inconsistent with Mrs. Law's²⁰, Andrew's²¹, and Susanna's²² relatively limited understanding of events.

Why the mistake was not discovered until 2004

9. Sheridan: He did not further clarify the matter, whether with Miranda or her superior, before submitting the mistaken conclusion to Susanna in the 13 October memo he drafted on her behalf which was eventually sent out to the UGC²³. Not only did Sheridan not do so as he was involved in this exercise for the first time²⁴, but more importantly he must have seen no need to do so, since he was unaware of the misinterpretation²⁵ and had in fact received clarification from Miranda on the 1st and 3rd Points. To him, the situation was "a lot clearer"²⁶ and the irresistible inference is that he must have seen no need to further clarify the matter. As a result of this, after having drafted the 13 October memo for Susanna²⁷, Sheridan had no further involvement in the matter until February 2004²⁸.

¹⁹ Sheridan [W2/304/§9]; [EMB3.1/170 at 173].

²⁰ Mrs. Law 4th [W2/153/§§166-170].

²¹ Andrew [W12/83/§4.1]; Day36/12:12-13:13 [370].

²² Susanna [W2/63 and 68]; Day25/11:2-14:8, 54:4-24 [371].

²³ [EMB3.1/170 at 173].

²⁴ Sheridan [W2/304/§10].

²⁵ [W2/304-305/§11]

²⁶ [EMB8/54]

²⁷ Sheridan [W2/304/§11]; [EMB3.1/170 at 173].

²⁸ Sheridan [W2/305/§§11 and 13].

10. Susanna: She was also entirely unaware of the misunderstanding at the time. Moreover, she observed that her colleagues may have simply assumed that the outcome of 200-200-0 was the result of implementing the policies in place at the time²⁹. As a result the 13 October memo to the UGC went out as drafted by Sheridan.
11. Miranda: After Sheridan's last e-mail of October 2003 she was not contacted by Sheridan on the subject. In fact it was she who contacted Sheridan about the matter in February 2004 upon reading newspaper reports. This was the first indication she had of an issue having arisen in relation to the figures³⁰. Sheridan himself admitted (and it rings true, given that the matter was complex and given that this was nearly 5 months later) that he was unable to give her an elaborate explanation as to the figures over the phone, and simply provided her with the Appendix outlining the 200-200-0 provision³¹.
12. Andrew: He summed up the position by saying on 1 March 2004: "Despite its level of importance, the request for manpower projection on KG teachers was not channelled through me and the matter had only been handled at the working level"³². Indeed the fact that QAD had been asked for their projections seems to have only come to his attention in February 2004³³, and the 13 October memo sent to UGC by Susanna never came to his attention before that date³⁴. This is entirely believable given that this was the first time Sheridan and Miranda were involved in the process, given that Miranda considered that her projections were preliminary, and given that she seemed to have believed that they were clear to Sheridan in October 2003³⁵. Further, from documents disclosed by Miranda, it seems more likely than not that QAD was first notified of the 13 October memo and the projection therein by way of the e-mail from Sheridan to Miranda on 4 February 2004³⁶.
13. Mrs. Fanny Law: She had not been asked by Susanna to provide steer for the relevant figure or been involved in the calculation thereof³⁷. She also had not asked Susanna about the figure³⁸, and if

²⁹ Susanna Day25/15:22-16:12 [372].

³⁰ Miranda 2nd [W2/277/§§11-12].

³¹ Sheridan [W2/305/§§13-14].

³² [EMB8/Tab9/64].

³³ Andrew [W2/81/§2.2].

³⁴ Andrew Day36/8:3-7 [373].

³⁵ Miranda [W2/276-277/§§6, 9-11].

³⁶ [W2/281-283].

³⁷ Law, Day 29/162:16-163:2; Susanna Day25/56:6-12 [374].

Andrew did not know about any mistake or miscommunication (which was his evidence before the Commission), the same would have applied to Mrs. Law³⁹. The likelihood is therefore that she probably only considered the recommendations outlined in the manpower requirements memo (as originally set out in the 13 October memo), and therefore on its way to Prof Li for inclusion in the initial formal advice that he sent to the UGC on 20 January 2004⁴⁰.

14. Moreover, there are numerous entirely reasonable explanations as to why Mrs. Law may not have paid as much attention to the matter as Profs Morris and Luk claim she should.:

(1) The division of responsibility within the EMB as outlined at Paragraph 15 of Chapter 11. It would be bizarre if senior officials such as Mrs. Law had to double-check the accuracy of every decision made at a working level, when they are entitled to assume that work delegated to their subordinates has been done properly⁴¹.

(2) There was an entirely plausible explanation proffered in the paper itself, *viz.*, complete achievement of the policy target after which no financial provision could be made for further training until any new targets were set.⁴² *A fortiori* if one considers the matters outlined in the next section of this chapter on policy objectives, and as the matter was not raised with her for policy steer⁴³.

(3) EMB and Mrs. Law did not make decisions on the basis of individual institutions and therefore the impact of the “0” provision would not have leapt out at Mrs. Law⁴⁴. While the matter is of course obvious with hindsight, the Commission should view the matter from Mrs. Law’s perspective at the time.

15. Clearly, the Commission should choose to believe these entirely reasonable explanations, rather than the alternative, extremely far-

³⁸ Susanna, Day25/16:23-25 [375].

³⁹ Law, Day29/169:11-170:2 [376].

⁴⁰ [EMB3.1/243-257 at 249]

⁴¹ Law, Day29/159:13-19 [377].

⁴² Law, Day30/41:22-42:21 [378].

⁴³ Law, Day 29/162:16-163:2; Susanna Day25/56:6-12 [379].

⁴⁴ Law, Day30/45:2-46:9 [380]; [ML-B/15] at 20.

fetches alternative that Mrs. Law noticed that the recommendation would have a significant impact on the HKIED, but deliberately chose not to check the correctness thereof so as to cause damage to the HKIED.

16. Prof Li: He similarly played no part whatsoever in the calculation of the “0” figure and clearly raised no queries about it, as the relevant portion in the 20 January 2004 letter to UGC was essentially unchanged from the 13 October 2003 manpower requirement memo⁴⁵. When the final numbers were passed to him for approval, he also did not and would not have noticed the specific issue, for his involvement was merely the final step in a long process⁴⁶ and it was clearly neither his practice nor inclination to pay a great deal of attention to any individual numbers given their negotiable nature. He had never seen the Start Letter⁴⁷.

Prof Li Day34/54:13-56:4

A: ... I think I have to add here, Mr Mok, because any numbers that we give UGC is an indicative number. It is not written in stone. If we say 200, 0, 0 or 200, 200, 100, all these numbers are negotiable. So personally, I don't pay a great deal of attention to any of these numbers, because I know that they come back to us if they're not happy and then we would renegotiate or the institution will go back to UGC if they are not happy. So it's a process of negotiation.

Q: Having regard to that, would you pay even less attention to how the figures were particularly worked out, like why 200 or why not 150?

A: To be quite honest, no, I don't.

Q: You don't?

A: I don't pay attention to the exact figures, whether it should be 111 or 210 or whatever. Basically, I look at the policy level, like for instance we need a lot of language teachers and my bureau will work out that by projection, for instance, we need 1,330 extra. If it wasn't for this inquiry, I wouldn't know that number, 1,330, but then UGC came back to us and said, "You can't get the students. You haven't got the capacity. This is too ambitious. You have to lower it." So my reaction, as you pointed out yesterday, I made the

⁴⁵ 13 October 2003 [EMB3.1/173]; 20 January 2004 [EMB3.1/249].

⁴⁶ Prof Li, Day 35/104:7-9 [381].

⁴⁷ Li, Day33/168:9-13 [382].

note and said, "Well, you know our intention. We want a lot of language teachers. Come back with a proposal. Come back to us with another number." So I look at the broad parameters rather than individual single numbers. As far as the numbers are concerned, I don't think they're that important. Because all of these numbers are negotiable.

Q: Then I won't ask you as to how, for example, the numbers came to 200, 200, 0 as opposed to 200, 200, 100. You won't be able to give your personal input on that matter?

A: I've only been following the inquiry, but I wouldn't have the input, except that when they came back with any numbers ultimately I would have to endorse it. But the work of working out the numbers and the negotiation, I don't participate in this, except when it finally comes back to me and say this is what is agreed upon. I will say, fine, and sign off on that.

*Prof Li Day 34/138:24-140:23*⁴⁸

Q: Professor, you would have been aware in January 2004, that one of the strengths of the IEd was in ECE?

A: They have many strengths, Mr Yu.

Q: And the answer to that question is?

A: Certainly. I believe they are very good at the early childhood education and I think they are still very good at early childhood education.

Q: Were you aware, when you sent off the letter of 20th January 2004 to Dr Alice Lam, that the Certificate for Early Childhood education number would come to 0 in 2007/08, that would end at 2006/07?

A: At that time, as I said, I didn't go through the figures and question how did that figure come about, because as I said, even if we give 100, 200, 300, it's open for negotiation. It wasn't that important. It's not as if this letter is now sent out and you must do it and these are the final figures. This is not an allocation letter. It's a letter of showing our intent, our intention and for UGC to come back and say, "Yes, we agree or we disagree."

Prof Li Day 34/149:22-151:4

Q: Going back to January 2004, when you went on the phone

⁴⁸

This was a continuation from Professor Arthur Li's "set in stone" answer at Day 34/138:24-140:3 [383], which has already been set out in full under the PUC portion of Chapter 10.

to Prof Morris, although you may not have got the Start letter, you got something which is basically the equivalent of it, which is the Administration's advice to the UGC for them to put the figures on their Start letter; is that right?

A: Yes, but I would not have got a particular number, because I would not have known what it was the year before. I did not have that table before me.

Q: Of course you can't remember this, but assuming it is correct that the telephone call took place on 21st April 2004 --

A: January.

Q: January 21st, 2004, then you would have some idea or a broad idea as to what the figures would look like in the Start letter; is that fair?

A: No, I wouldn't have gone into that sort of detail. I would have known that we will need a lot more language teachers, but that will be as far as I would be concerned.

Q: But picking up the phone with Prof Morris and if you're going to talk to him about the difficulties that he's likely to face in the coming period, would you not have looked at perhaps -- when I say "looked at", I mean pay attention to -- the kind of figures which would affect the IEd in particular, like the PUC and the ECE numbers?

A: No, I wouldn't have looked at particular figures or student numbers. I would have looked at the overall broad picture of funding for HKIEd. I would have looked at the demographics since we have less children, we need less teachers, rather than this particular year you have X number or Y number. I wouldn't have gone into that sort of detail.

17. Finally, when Prof Morris complained to Prof Li personally about the allocation, he had to ask for a background brief to be prepared on the matter as he had no idea what the fuss was about⁴⁹.

Prof Li Day 37/117:10-118:17

Q: I now come to your part and to see whether or not you remember this is what happened. At U2, please, tab 70. This may not be a document which has been referred to before. Very shortly after that meeting, HKIEd, Prof Morris wrote to yourself a letter dated 15th March 2004, in which he referred to this very matter, right?

⁴⁹

[U2/70]; Day37/117:10-118:17 [384].

A: Yes.

Q: You will see at the top right-hand corner there are some handwritten words which say: "Amy, find out background please" and then the letter (a).

A: Those are my words.

Q: Is that the time when this matter first came to your notice in some formal way?

A: Yes.

Q: You were asked directly at that instance to respond?

A: Well, Paul Morris, as you can see, wrote to me, making complaints about decisions to close down Certificate of Education courses and so on, and I really didn't know what was going on.

Q: You didn't know what was going on?

A: I didn't know what was going on, because this was number crunching done at the working level. Since he made the complaint directly to me, I asked my staff to find out what exactly was the background.

Q: This is a whole matter which I spent perhaps hours and hours exploring in the Commission, 200-200-0. Did you have anything to do with that, the planning and all those matters?

A: No, because these numbers, as I said, are negotiable. So every number is negotiable. Therefore it really wouldn't come up to me until the final end of the position.

18. It goes without saying that, as with Mrs. Law's case, the Commission should therefore choose to believe these entirely reasonable explanations, given that the alternative is too far-fetched to contemplate.
19. UGC: They clearly did not see anything wrong with the matter, as per the evidence of Charmaine Wong⁵⁰ and SG/UGC. Indeed, it was not raised in the latter's memo of 14 November 2003⁵¹ or in C/UGC's memo to SEM of 14 January 2004⁵². Furthermore, it is also clear from both Andrew and Susanna's evidence that no inquiries were made by the UGC to the PDT⁵³, while there is no useful evidence available regarding the author or meaning of the

⁵⁰ Charmaine Wong [W2/97/§20].

⁵¹ [EMB3.1/183-184].

⁵² [U2/151].

⁵³ Susanna, Day25/16:17-22 [385]; see also Andrew's evidence on the matter in the paragraph above.

manuscript comments on UGC’s copy of Susanna’s 13 October memo⁵⁴.

Conclusion: Clearly a mistake

20. In considering this, the Commission should bear in mind the submissions on the proper approach to the allegations outlined in Chapter 2. The words of Lord Nicholls of Birkenhead in the seminal case of *In re H (Minors)* are also particularly apposite⁵⁵:

“When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. *Fraud is usually less likely than negligence...*”

21. In the present case the available evidence that sets out the context within which the “0” figure made it into the 1st Start Letter proves that the entire episode must have been a misunderstanding created at the working level that went unnoticed for numerous entirely credible reasons. Any case to the contrary must fail, let alone that advanced by Profs Morris and Luk, since there was clearly nothing sinister about the process, and there has not even been the slightest hint of any attempt on the part of Mrs. Law or Prof Li to disadvantage the HKIED by interfering with the matter (as has been confirmed by Andrew, Miranda, and Charmaine Wong⁵⁶) let alone pretending not to notice the mistake.

No negativity towards HKIED’s ECE or HKIED in general

22. During cross-examination of both Mrs. Law and Professor Arthur Li, suggestions were made that they and/or EMB had a negative attitude towards the HKIED based on actions taken in the ECE arena. An inter-related question was the underlying rationale of certain decisions made on the subject. This section deals with both issues and in doing so also covers the actions taken with regard to the “0” provision for PT C(ECE) places.

⁵⁴ Susanna, Day24/212:17-213:5 [386]; Charmaine Wong 1st [W2/97-98/§§20-22]; [U1/360]; [U2/84].

⁵⁵ [1996] AC 563 at 586.

⁵⁶ Andrew 1st [W2/85/§6]; Charmaine Wong [W2/101/§37]; Miranda 2nd [W2/280/§23].

October 2003 until 2005/08 Triennium Start Letter

23. The evidence clearly establishes that the decisions made in late 2003 by the EMB were entirely justified on the grounds of then-existing policy:

- (1) QKTs: One of the EMB's policy objectives prior to January 2005 was for kindergartens to employ at least 100% of QKTs by the 2004/05 school year, and each kindergarten had to have not less than 1 QKT per 15 students. That had effectively been accomplished by the end of the 2003/04 school year. As the policy had been completed, there was hence no rationale for continuing to offer QKT places⁵⁷.
- (2) C(ECE): Another EMB policy objective was for all serving KG principals to have completed C(ECE) by the 2005/06 school year. However, by September 2003 the EMB had found that there were only some 218 persons left before this could be accomplished⁵⁸. Moreover, by the time of the 2005/08 triennium planning, EMB had expected that there would be even less than 218 persons left to fulfill the policy target since by that time the 2003/04 school year had been completed and it was expected at least some of these 218 people would have enrolled in the 369 places allocated for the 2004/05 rollover year⁵⁹.

However, in 2003 there was no document other than the 13 October 2003 memo⁶⁰, or perhaps the policy committee paper (which would have incorporated the 13 October memo), which would have set out any rationale as to why the 200 places were awarded for the first 2 years of the 2005/08 triennium⁶¹. This was the exact reason the mistake of "0" places was plausible when it was considered by Mrs. Law⁶².

24. Further, in context of other actions being taken by Mrs. Law and the EMB, there was no question of negativity towards the HKIED:

- (1) At the lunch of 14 October 2003:

⁵⁷ Law, Day31:134:10-135:24, 136:7-21 [387]; [EMB8/244/§2].

⁵⁸ Law, Day31:135:25-136:22-138:10 [388]; [EMB8/244/§2].

⁵⁹ Law, Day31/138:11-20 [389].

⁶⁰ [EMB3.1/1730 at 173]

⁶¹ Law, Day31/138:20-140:24 [390].

⁶² Law, Day31/138:20-139:15 [391].

- (a) Merger – HKIEd had been very positive and keen to explore the matter of integration. As a result, both Mrs. Law and Prof Li had had it presented to them that HKIEd was keen to have an early indication of a plan to merge (in a loose sense) and they could have had no negative feelings concerning HKIEd at the time in this respect⁶³.
 - (b) LPAT – Mrs. Law had no disagreement with the HKIEd’s position (as indicated by Dr. Leung) over the LPAT results and even agreed to assist the HKIEd’s PR efforts by releasing the press release to them a day earlier⁶⁴.
 - (c) Upgrading of HKIEd – There was a cordial atmosphere with a common objective to move HKIEd towards the path of institutional upgrading⁶⁵.
- (2) Prof Li would not have emphasised his desire that UGC come back with another proposal to “rob Peter to pay Paul” (as covered in Chapter 10) if he had had a negative attitude towards the HKIEd. While the decision was institution-blind, the EMB would have realised that HKIEd would have been the main beneficiary of the original planned increase to 1,330 Primary FYFD places, especially given the phraseology⁶⁶.
- (3) Doubts had been raised by Prof Li and the UGC in around October 2003 as to the need for the 1,330 FYFD places. However, Mrs. Law had stood firm on the need for the places, based on how the figures had been reached. This decision would, while institution-blind, have benefited HKIEd if UGC had passed it⁶⁷.

25. There can therefore be no serious suggestion that Mrs. Law and/or Prof Li had taken a negative attitude towards the HKIEd during this period. All that happened was that projections were made on the basis of existing policy and the available data, with no attempt to remove any numbers from the HKIEd⁶⁸.

⁶³ [EMB5/Tab13/162]; Law, Day31/141:11-142:143:3 [392].

⁶⁴ [EMB5/Tab13/162]; Law, Day31/143:5-144:25 [393].

⁶⁵ [EMB5/Tab13/162]; Law, Day31/145:3-15 [394].

⁶⁶ [EMB3.2/Tab62/239]; Law, Day31/146:1-147:25 [395].

⁶⁷ [EMB3.1/Tab55/175]; Law, Day31/148:14-150:14 [396].

⁶⁸ Law, Day31/151:11-17 [397].

1st Start Letter until March 2004

26. Noting the provision in the Start Letter, HKIEd and other teacher education institutions reacted strongly to the mistaken suggestion. However, on the part of EMB, the whole affair seems to have been first discovered in late January/early February 2004. Andrew first found out via the press and telephone calls, while Miranda only found out via telephone calls in early February⁶⁹. From then until March 2004, response to enquiries from the media and LegCo were prepared⁷⁰, and there were various discussions with HKIEd, including a meeting held with the HKIEd on 27 February 2004 where they reverted with proposals.
27. Eventually, however, the matter was brought to the attention of Mrs Fanny Law by Andrew's memo dated 1 March 2004, asking for a decision by 3 March 2004. 2 questions therefore had to be resolved by the EMB:
- (1) Whether and what kind of courses to offer – As to this, various proposals were made, including a proposal by Andrew involving an allocation of QKT and 150 C(ECE) places (and warning of political sentiment over the matter)⁷¹. This was eventually overruled by Mrs. Law at a meeting on 12 March 2004 (which is covered in more detail later).
 - (2) How to fund the courses – This was what caused real problems, for the Government was asking for savings of up to 11% a year over 5 years. EMB projections at the time had already indicated a deficit starting in 2004/05 that would grow to HK\$2.4 billion by 2007/08 (due to the need to implement the education reforms at the same time)⁷². No concrete decision could be made on C(ECE) until this budgetary concern could have been resolved. It was initially considered that such places had to be funded from UGC savings but this was unable to solve the problem⁷³. There was also exploration of other alternatives at a meeting on 5 March 2004⁷⁴.

⁶⁹ Andrew 1st [W2/83/§4.2]; Miranda 2nd [W2/277/§12]; [ML-B/Tab5/44]

⁷⁰ Miranda 2nd [W2/277-278/§12]; [U2-186, §5]

⁷¹ [EMB8/Tab9/67-68].

⁷² Day29/163:3-164:5; 174:14-23 [398].

⁷³ [EMB8/Tab9/66]; Law, Day29/174:22-23; Day30/53:5-24, 56:11-58:22 [399].

⁷⁴ [EMB8/Tab10/70]; Law, Day29/174:19-21 [400].

28. Subsequently, Mrs. Law on 11 March 2004 e-mailed Andrew, Susanna, Miranda and Chris Wardlaw with a list of questions to set the agenda for a holistic discussion of the ECE sector including the question of (but not decision as to) whether there should be providers other than the HKIED⁷⁵. A paper was prepared, almost certainly by Miranda, in response to these questions whereby there was internal assessment of the quality of ECE programmes, whereby PolyU came first (based on EMB's first-hand knowledge) with HKIED following thereafter (out of 4)⁷⁶.
29. The meeting took place as planned on on 12 March 2004⁷⁷. There:
- (1) Mrs. Law considered (contrary to Andrew) that the QKT target had been met and overruled the proposal to provide QKT places⁷⁸. However, she was in any event also of the view that it would be desirable to allow opportunities to upgrade professional qualifications, which meant offering C(ECE) classes (as they focused on degree-holders) rather than the less adequate QKT qualification⁷⁹.
 - (2) It was decided that it was “time to explore the long-term target to establish a professional ladder of KG teachers”. In other words, it was Mrs. Law's intention to begin a comprehensive review to upgrade the existing teaching force of both principals and teachers⁸⁰.

Nevertheless, EMB still lacked adequate funding to carry out this proposal⁸¹.

30. Meanwhile, as has already been referred to above, on 15 March 2004, Prof Morris wrote to Prof Li querying the “0” allocation for PT C(ECE) cases. Prof Li asked his staff to find out the background to the whole affair as he had no idea what was going on. A background note dated 16 March 2004 was prepared for Prof Li's consideration⁸².

⁷⁵ [EMB8/23]; Law, Day31/152:12-154:1 [401].

⁷⁶ [EMB8/224-225]; Day31/155:2-156:21 [402].

⁷⁷ [EMB8/223].

⁷⁸ This was reflected by the UGC [U2/262].

⁷⁹ [EMB8/223]; Law, Day29/171:10-172:14; 173:20-174:7; Day31/156:22-9 [403].

⁸⁰ [EMB8/223/§2(d)]; Law, Day31/157:10-158:1 [404].

⁸¹ [EMB14/Tab14/1129]; Law, Day31/158:2-159:3 [405].

⁸² [U2/70]; Li, Day37/117:10-118:17 [406]; [EMB8/239].

31. Upon receipt of the note, Prof Li considered that the proposal to merely return 200 C(ECE) places to be inadequate. He wanted to do something for pre-primary education despite the EMB's funding problem⁸³. Therefore on 17 March 2004 Prof Li spoke to Mrs. Law and told her that he had made an in-principle decision to keep ECE's funding intact while reviewing the area as a whole, after which there would probably be a need to inject additional resources. The aim was to promote quality delivery of ECE by allowing more opportunities for all workers to obtain the C(ECE) qualification⁸⁴.
32. At the time he made that decision he expected that there would be detailed analysis and discussion of the sector, including analysis of the question of how to use the savings from the reinstatement of 200 (instead of 468) places to fund other training providers⁸⁵. Further, Prof Li made the decision as a principal official, rather than as a civil service (policy-based) decision. In doing so, he bore in mind not only the need to help ECE, but also the broad consideration that diversity and competition would also potentially benefit the sector⁸⁶.
33. At the same time, this future investment would only be possible if EMB could be exempted from the 11% savings target that had been set by the Financial Secretary. Prof Li therefore undertook to restore ECE funding first, and argue with the Financial Secretary about exemption later⁸⁷.
34. Steps were taken to put this plan into action. On the same day, the UGC was informed of the decision to restore the 200 C(ECE) places⁸⁸. Later that month, at least 2 meetings were held with stakeholders and interested parties (including LegCo member Yeung Yiu-chung), who were reassured that investment in the ECE sector would be maintained⁸⁹. A response was also provided to the LegCo Special Finance Committee by EMB that money would be set aside for 900 in-service C(ECE) places per annum⁹⁰. Then at some point in 2004, work began on the PSEM paper by Andrew and his colleagues. It took a long time to compile, and was

⁸³ Li, Day37/121:16-25 [407].

⁸⁴ Day37/122:1-123:16 [408].

⁸⁵ [EMB3.2/Tab69/318].

⁸⁶ Li, Day34/162:14-162:18; Day37/124:19-125:12 [409].

⁸⁷ Law, Day30/65:11-22; Day31/159:16-24 [410].

⁸⁸ [EMB3.2/Tab68/316].

⁸⁹ [EMB8/Tab14/76-86]

⁹⁰ [EMB8/250]; Law, Day31/167:10-169:3 [411].

eventually presented, as discussed later, on 14 January 2005⁹¹. In the interim, Prof Li's discussions with the Financial Secretary had paid off by November 2004⁹².

35. In short, in March 2004, Prof Li made a bold decision in the interests of Hong Kong to *explore ways and means of further upgrading the ECE sector*. In light of not only this but the other factors mentioned above, there is therefore clearly no basis for any suggestion that the decision to return PT C(ECE) numbers to 200 (instead of 369) after the "0" decision, and/or not to offer QKT places, was an example of the EMB targeting HKIEd. Indeed, as will become clear, given its strength in ECE the HKIEd could have benefited immensely from this decision. Whether it did so or not, and why, is dealt with next.

From March 2004 until the decision to tender

36. The PSEM paper that was presented at the 14 January 2005 meeting presented 3 options for implementing the target of 900 C(ECE) places per annum mentioned in EMB's written response to the LegCo Special Finance Committee: (1) Increasing UGC-funded places (2) Increasing subsidised training places of IVE, an EMB-subvented body (3) Putting places out to open tender.⁹³ The first option was not recommended, while a combination of the second and third was (with 150 places to HKIVE and to put 215 places up for open tender) for the following reasons⁹⁴:

- (1) UGC-funded C(ECE) places were much more expensive (\$123,600 per fte or \$220,000 per 3-year place). It was also thought that non-UGC-funded institutions should not be deprived of the opportunity to take up the additional places⁹⁵.
- (2) In contrast, HKIVE's costs of \$67,500 per training place was competitive⁹⁶.
- (3) To ensure diversity in terms of training opportunities, quality and cost-effectiveness, open tendering would allow all

⁹¹ Li, Day37/122:1-125:12 ; [EMB8/244-254 at 247 §20]; Andrew, Day36/99:16-100:2 [412].

⁹² Law, Day30/65:11-22 [413].

⁹³ [EMB8/245-246/§§7-11].

⁹⁴ [EMB8/246-247/§§12-18].

⁹⁵ [EMB8/245/§9]

⁹⁶ [EMB8/246/§9]

standing institutions to bid for additional places based on their expertise and quoted prices⁹⁷.

37. At the 14 January 2005 meeting itself, after presentation and discussion of the PSEM paper, it was agreed amongst those present that all 400 available places had to be tendered out given the intention to avoid monopoly, ensure diversity of training opportunities, and optimise funding resources⁹⁸. This was in spite of the fact that IVE was one of the recommended options, and the fact that using IVE subsidised training places would have been expedient from an administrative point of view⁹⁹.
38. Viewed in context, the decision to put out these extra places to tender cannot therefore in any way be described as an attempt to disadvantage HKIED or as an indicator of any negativity towards it from the EMB. If anything, it was an opportunity for the HKIED to strengthen its role and position in a vastly expanded ECE market.

The ECE Tender process

39. The outcome of the 2005 (and first) tender process is a matter of record, i.e. that HKIED was allotted 120 places for 3 years¹⁰⁰. However, to see this in context, one has to examine the procedure by which this outcome was reached:

- (1) Quality: The criteria for this particular tender were adjusted from the normal 60/40 bias towards price over quality, to an even 50/50¹⁰¹. In the tendering exercise, HKIED scored the highest mark for quality (technical) assessment¹⁰². In a memo dated 17/5/2005 from PSEM to Secretary for Financial Services and the Treasury, HKIED was described in the following terms:

“The highest tenderer, HKIED, has established a leading role in offering early childhood education courses and for the past ten years, the institute has all along been assigned the role by UGC to offer policy-driven courses in early childhood education. In the tender proposal, the institute has proposed a well-

⁹⁷ [EMB8/246/§10]

⁹⁸ Andrew, Day36/100:3-6 [414]; [EMB8/243].

⁹⁹ Law, Day30/104:21-23 [415].

¹⁰⁰ [EMB8/Tab15/134-85].

¹⁰¹ Law, Day29/179:17-21 [416].

¹⁰² Law, Day31/162:19 [417].

qualified teaching team with 100% of them having Master Degree or above. In addition, HKIED got the highest score for the quality (technical) assessment among the submitted tenderers and thus reflected an outstanding quality performance of the course provider.”¹⁰³

- (2) Price: HKIED’s unit price was HK\$82,000. This resulted in it being ranked third amongst the 3 bidders.¹⁰⁴
- (3) Before Tender Negotiation: Despite the aforesaid, HKIED was recommended by EMB for approval by the Central Tender Board to be awarded 240 places out of the 280 it had bid for. This was the most out of the 3 successful providers, and nearly half of the 600 places awarded (up from the 400 originally intended at the 14 January 2005 meeting)¹⁰⁵.
- (4) After Tender Negotiation: In view of the initial tender results, EMB intended to maximize the number of places to be procured with the available resources. It was estimated that a total of 760 places could be provided through tender. One possibility, as EMB considered at that time, was to first allocate the 600 places to the three successful tenderers in order of ranking and then negotiate with them for the additional number of places¹⁰⁶. However, the Central Tender Board advised that tender negotiation should be conducted with all concerned tenderers before EMB made recommendation on the number of training places to be awarded to the individual tenderers¹⁰⁷.

The arrangement advised by the Board was to aim at obtaining the best value for money offer, and to negotiate with the lowest tenderer first for its agreement to provide as many training places as possible. EMB could then proceed to negotiate with the second ranking tenderer only if the lowest bidder could not provide all the required places and so on and so forth. Moreover, in view of the relatively high unit cost of HKIED’s bid, the Board advised EMB to

¹⁰³ [EMB8/134-57]

¹⁰⁴ [EMB8/134-4 to 5]; Law, Day31/161:21-162:10 [418].

¹⁰⁵ [EMB8/134-4 to 5].

¹⁰⁶ [EMB8/134-54/§2]; Law, Day31/164:9-23 [419].

¹⁰⁷ Law, Day31/166:3-19 [420].

consider negotiating with HKIED on price reduction of its original offer of 240 places¹⁰⁸.

(5) Final Result: Upon negotiation with the 3 bidders in May 2004:

(a) HKIED did not agree to lower its prices¹⁰⁹, which therefore reduced the number of places to be made available to it; and

(b) The other two institutions became able to expand their capacity even though they had charged slightly higher prices for the additional places¹¹⁰.

The result was that HKIED was eventually only awarded 120 places out of the expanded total of 760 tender places¹¹¹. Furthermore, the addition of these 760 places to the 200 other UGC-funded (and not tendered) ECE places per annum for the 2005/08 triennium meant that there were 960 ECE places per annum, which was more or less in line with the 900 ECE places per annum as had been presented to LegCo's Special Finance Committee in March 2004¹¹².

(6) Capacity: No single provider (including HKIED) would have had the capacity to handle all of the 760 places that were eventually awarded to the 3 tenderers, let alone the total of 960 ECE places¹¹³. It should also be noted that the entire exercise resulted in the pre-primary sector obtaining 760 certificate level places whereas previously there had been only 169 certificate and 200 QKT course places, bringing in significant benefits to the community by facilitating a speedier upgrade to the teaching force¹¹⁴.

40. For 2006 and 2007, HKIED bid for 320 places each year with a unit cost of HK\$77,900 per place¹¹⁵. However, similar principles of allocation were followed and HKIED, being the tenderer with the lowest Total Score, was the last to be considered. It was therefore awarded 120 places, which was the minimum number of partial acceptance agreed by the Institute¹¹⁶.

¹⁰⁸ [EMB8/134-60 to 61].

¹⁰⁹ [EMB8/134-78]

¹¹⁰ Law, Day31/166:16-167:4 [421]; [EMB8/134-75 to 134-76].

¹¹¹ [EMB8/134-79 to 134-80 and 134-82].

¹¹² Law, Day31/168:19-169:3 [422].

¹¹³ Law, Day31/169:24-170:10; Li Day34/62:21-63:14 [423].

¹¹⁴ Law, Day29/180:12-23 [424].

¹¹⁵ [EMB8/193-6].

¹¹⁶ [EMB8/193-7 to 193-8].

41. Prof Morris in his oral evidence disavowed any case premised on an unfair tendering process¹¹⁷. Given the aforementioned matters, it is clear that if HKIED did not benefit as much as it could have from the 2005/06/07 tendering exercise, this was not due to any fault or intention to disadvantage the HKIED, whether on the part of either the EMB, Prof Li, or Mrs. Law. Indeed, as Mrs. Law pointed out in her oral evidence:

Mrs. Law **Day31/174:11-175:5**

Q: Having regard to all that, can you please -- and I also want to give you a second opportunity as well -- respond to my learned friend Mr Yu's question, whether or not the decision made around this point in time, the tenders and so on, was driven in any way by negativity on your part or EMB's part or on the part of Prof Li?

A: Absolutely not. In particular, in the areas of early childhood education, we have always felt that The HKIED was doing a good job and as far as possible, where policy permitting, we would offer these places to HKIED. Of course, we are also mindful that resources are tight and we also wish to maximise value for money, therefore, we took the decision of going for tender. But as you rightly pointed at, even in the tender exercise, because their quality score ranked first, we would like to give them the numbers that they asked for in the first place, but because of the tender rules, we were required to renegotiate and in that process, had to bring down the number to 120. So there was no negativity, no deliberate attempt to disadvantage HKIED.

2005/06: ECE Review and Chief Executive's Policy Address

42. From February 2005 onwards the EMB began to conduct a comprehensive review of the ECE system. This was a different exercise from Prof Li's initiative in March 2004¹¹⁸, in that the former culminated (as will be seen below) in several matters being adopted as policy by the CE's address. However, the underlying principle -- to benefit ECE -- was exactly the same¹¹⁹.

¹¹⁷ Morris, Day8/50:22-25 [425].

¹¹⁸ Andrew, Day36/99:3-100:12 [426].

¹¹⁹ Li, Day37/132:7-133:3 [427].

43. This review began with Mrs. Law’s e-mail of 8 February 2005¹²⁰. This was soon followed by a series of meetings where different speakers spoke to the EMB and presented their views on ECE¹²¹.
44. The result of these meetings was a PSEM paper, which Andrew had had involvement in. It was detailed and it took Andrew and 2 other colleagues a very long time to put together¹²². Eventually, a brief was also produced for Prof Arthur Li on the matter for a 6 July 2006 meeting, which also took Andrew and his colleagues a long time to prepare¹²³.⁷ After that a revised proposal was created dated 9 August 2006¹²⁴.
45. The proposal was subsequently developed into a new policy as announced in the CE’s policy address, the effect of which was to generate a much bigger demand for training, and which required the participation of more than 1 institution¹²⁵. This was because the new policy involved the professional upgrading of KG principals and teachers, and a range of subsidised and self-financing training programmes at various degree levels to provide flexible and diversified training modes. Under the new “voucher” system, eligible kindergartens would be granted financial subsidy designated for professional upgrading of principals and teachers in the next five years.
46. It is also worthy of note that SG/UGC in his evidence confirmed the following:
- (1) In relation to the ECE review, his understanding was that the EMB wanted more qualified teachers¹²⁶; and
 - (2) Although the UGC had not considered the matter (as it had not been asked to consider it), if there were a major initiative to push for the upgrading teachers for ECE, it would not be against the principle of healthy competition to have 2 to 3 providers in the area¹²⁷.

¹²⁰ [EMB14/1328-2]

¹²¹ [EMB14/1328-4 to 13]; Andrew, Day36/92:12-93:5 [428].

¹²² [EMB14/1357 to 1398]; Andrew, Day36/93:6-94:6 [433].

¹²³ [EMB14/1406 to 1426]; Andrew, Day36/94:7-21 [434].

¹²⁴ [EMB14/1427 to 1433]; Andrew, Day36/94:22-95:4 [435].

¹²⁵ [EMB13/1034/§45]

¹²⁶ Stone, Day22/85:11-19 [438].

¹²⁷ Stone, Day22/86:21-87:7 [439].

May/June 2006 meetings and role-differentiation of PolyU

47. The ongoing process of the ECE review was therefore the context within, and indeed the purpose for, which the May/June 2006 meetings were held with HKU, CUHK and PolyU. The purpose of these specific meetings was threefold:

- (1) Studying whether such an ambitious plan vis-à-vis ECE was feasible at all by gauging the capacity and interest of Hong Kong's institutions¹²⁸.
- (2) Soliciting the assistance of other institutions with teacher training experiences to explore further diversification of training provision in terms of academic level, programme content and mode of delivery¹²⁹.
- (3) Recruiting better qualified candidates. This was the main reason that these Universities were invited to the May meeting, since the reality is that there is a pecking order in terms of institutions for school leavers, and one way of getting more academically talented students to enter ECE would be to ask relatively more desirable institutions to offer ECE training¹³⁰.

48. It is clear that these are the matters that were successfully pursued at the May and June 2006 meetings. At the former the following were explored:

- (1) PolyU was about to close down its courses due to role-differentiation. While it was keen to revive ECE, it would consider being involved via an inter-disciplinary approach¹³¹, which was clearly in line with diversification. At the same time, it had obvious expertise in ECE that Mrs. Law did not want to lose¹³².
- (2) Mrs. Law had suggested that the expertise could be transferred to HKIED, but the PolyU staff had not reacted positively to the suggestion¹³³ (this was not disputed by

¹²⁸ Andrew, Day36/68:24-69:4, 96:10-18 [440], Law 4th [W2/158/§§192-193].

¹²⁹ Law, Day31/184:19-25; Andrew, Day36/71:15-18 [441].

¹³⁰ Law, Day30/25:21-26:10 ; Day31/185:1-16 [442].

¹³¹ [EMB8/Tab18/195]; [E3/278].

¹³² Law Letter [W2/177/(1)(j)].

¹³³ Law 4th [W2/158/§194]; Law, Day30/32:1-12 [443].

Profs Morris and Luk). This clearly ruled out any PolyU/HKIED joint effort. On the other hand, at the meeting CUHK had evinced an interest in developing a joint programme with PolyU¹³⁴. Furthermore, collaboration between both of them was more likely since CUHK did not have an ECE programme¹³⁵.

- (3) The matters to be worked out by the 3 institutions at the June 2006 follow-up meeting included the types of courses to be proposed, financing, and capacity. These were clearly related to the ECE review process and intended policies, as outlined above¹³⁶.
- (4) After the meeting there was some discussion about the 36 FYFD places available for BED (ECE) from UGC, as already mentioned above, and whether they could or should be allocated to HKU or a joint CUHK/PolyU programme.

49. The credible and objective evidence in relation to this meeting clearly indicates that Mrs. Law did not¹³⁷ and would not have criticised the quality of HKIED's courses at the meeting, but was more likely referring to the quality of student intakes at different institutions:

- (1) EMB's own position has always been that HKIED's ECE programme enjoys a good reputation. See EMB's internal assessment of the 4 ECE providers which stated that HKIED was second only to PolyU as an ECE provider¹³⁸, minutes of a Legco Panel of Education meeting on 7 February 2005¹³⁹. Furthermore, the tender report of 12 May 2005 had also clearly given HKIED a quality score of 50 (out of a maximum of 50)¹⁴⁰.
- (2) The attribution of complaints by Mrs. Law as having regard to the "quality" of the HKIED's programmes in Charmaine

¹³⁴ Law Letter [W2/177/§(1)(j)]; Law Day30/126:17-21 [444].

¹³⁵ Law, Day30/34:13-17 [445].

¹³⁶ [EMB8/Tab18/195]; [E3/278-279/§§(i) to (iv)].

¹³⁷ Law, Day30/125:10-16 ; Day31/190:25-191:2 [446].

¹³⁸ [EMB8/225]; Law, Day31/189:22-190:1 [447].

¹³⁹ [U4/Tab131/99]; Law, Day31/191:3-192:20 [448].

¹⁴⁰ [EMB8/134-5].

Wong's e-mail¹⁴¹ is more likely than not to have been an innocent misunderstanding on the part of the latter part:

- (a) As Charmaine Wong acknowledged, she did not have the full background to the meeting (i.e. the ECE review context) whereas Mrs. Law did¹⁴².
 - (b) In any event, she seldom attended such meetings, as the normal UGC presence would be provided by SG/UGC¹⁴³.
 - (c) The e-mail was her subjective interpretation of what Mrs. Law had said, and was written 2 days after the event¹⁴⁴. Charmaine Wong finds Mrs. Law's explanation to be reasonable and admits that there is a possibility she may have misunderstood Mrs. Law's comments¹⁴⁵.
 - (d) A careful reading of the e-mail demonstrates that Charmaine Wong used "quality" in different ways and contexts¹⁴⁶.
- (3) The source of the comment as to the admission requirement of HKIED's PGDE ECE course starting from 2005/06 was information volunteered by the representative from HKU, and Mrs. Law's comment on that was therefore not an outburst on her own part¹⁴⁷. In any event it seems inherently unlikely that she would have simply volunteered information/opinion on the matter.
- (4) Ongoing and subsequent events (the ECE review, the reasons outlined in the request for suspension of PolyU's role-differentiation, and the effect of the policies announced in the CE's speech) clearly demonstrate that clearly support Mrs. Law's point that the meeting was to explore avenues relating to the proposed increase in ECE training places. Indeed, the point that it was an informal exploratory session was also confirmed by Charmaine Wong and Andrew's evidence¹⁴⁸.

¹⁴¹ [E3/276 to 280].

¹⁴² Law Letter [W2/174/§1]; Charmaine Wong 2nd [W2/202/§38].

¹⁴³ Charmaine Wong 2nd [W2/199/§9].

¹⁴⁴ Charmaine Wong 2nd [W2/199/§§12-13].

¹⁴⁵ Charmaine Wong 2nd [W2/202 to 203/§§36-38, 41-43]; Law, Day30/28:14-29:23 [449].

¹⁴⁶ Law, Day31/188:18-190:24 [450].

¹⁴⁷ Law Letter, [W2/175 to 176/§(1)(f), (g)].

¹⁴⁸ Charmaine Wong 2nd [W2/201/§28];

- (5) In contrast, the context provided by the expressed intention within the ECE review process to upgrade the academic quality of ECE students makes it inherently likely that when Mrs. Law spoke “quality”, she meant the “quality” of the student intake¹⁴⁹.
- (6) No evidence has been adduced to contradict Mrs. Law’s evidence as to the quality of the HKIED student intake for ECE programmes, whether in isolation or vis-à-vis HKU¹⁵⁰.
50. It is true that Mrs. Law expressed that the meeting should be confidential. However, it is clear that the reason for this was that the matters discussed could and did result in policies that were announced in the CE’s policy address¹⁵¹. There is no reason to doubt this explanation given the context and reasons for which the meeting was held, and the policies discussed in the CE’s policy address. Any suggestion that the confidentiality was due to more sinister reasons is entirely unjustified.
51. At the follow-up June 2006 meeting, progress had clearly been made with regard to the matters discussed at the prior meeting, all of which, as already outlined, were clearly to do with the ECE review¹⁵².
52. The inevitable conclusion must be that the mere fact that HKIED was not included at these two meetings was not due to any EMB negativity towards it, or anything even remotely similar. Rather, they were driven by EMB’s desire to explore the feasibility of the proposals being fleshed out by the ECE review.
53. Follow-up action: The point immediately above is driven home when one considers what steps were taken next, and which demonstrate the inherent flaw in the argument that these steps were taken with a view to damaging the HKIED:
- (1) HKU confirmed (in accordance with their report at the June 2006 meeting) that they had very good students who were interested in ECE, and that they would take 40 places out of their own student numbers, rather than ask for more numbers

¹⁴⁹ Law, Day30/25:15-26:13 [451].

¹⁵⁰ Law Letter [W2/177, 179].

¹⁵¹ Andrew, Day36/69:18-70:4 [452], Law Letter [W2/174/§(1)(a)].

¹⁵² [EMB8/Tab18/196-197].

from the UGC¹⁵³. Clearly, this can in no way be construed as an attempt by HKU to grab more UGC ECE places, and/or what HKIED might have assumed to be “its” ECE places.

- (2) In relation to PolyU/CUHK BA, it was preliminarily proposed at that time that the course to be offered would be self-financed and that, strictly speaking, UGC approval was not required. However, approval was sought given the policy of role-differentiation¹⁵⁴. It was meant to be a temporary suspension for a short period to enable an extremely well-regarded ECE programme to transfer its expertise to another provider¹⁵⁵.
- (3) They had both, at the meeting, asked for EMB’s support. There was nothing unusual about this, given that the same treatment had been granted to HKIED in the past in relation to upgrading its certificate programmes¹⁵⁶.
- (4) Most importantly, the amount of places that were proposed to be offered via the HKU and PolyU/CUHK programmes were a mere drop in the ocean of the demand for professional upgrading from the 10,000 KG principals and teachers in Hong Kong that was the result of the 2006 CE policy address. Indeed, as was pointed out in evidence, the result of the policy was that the ECE cake would have become much bigger¹⁵⁷, to the extent that no single institution would have been able to singlehandedly deal with the intake¹⁵⁸.

54. Further, there has never been any reason to doubt SG/UGC’s or C/UGC’s testimony that the matter was properly considered by the UGC and all of its members before being approved for the reasons outlined in its letter of 29 August 2006¹⁵⁹. Indeed, no suggestion was made that that decision-making process was either improper or unfair.

¹⁵³ [EMB8/Tab19/198].

¹⁵⁴ Law, 4th [W2/159/§198]

¹⁵⁵ Law, Day31/78:19-79:22 [453].

¹⁵⁶ Law, Day31/81:6-83:13 [454].

¹⁵⁷ Law, Day31/80:5-20 [455].

¹⁵⁸ Law, Day31/169:24-170:8 (although this is in relation to tender places, it must apply *a fortiori* to the new 2006 policy initiative places); Andrew, Day36/95:24-96:3 [456].

¹⁵⁹ Stone, Day22/60:17-61:21; Lam, Day23/78:9-80:6, 81:1-16 [457].

55. In the premises it is clear that HKIED (and indeed the other ECE providers, save for PolyU) was not invited to the meetings not because of any negativity towards it, them, or attempt to disadvantage either it on behalf of EMB or Mrs. Law, as has been claimed by Profs Morris and Luk¹⁶⁰. On the contrary, the only reason for this was not invited to the meeting was because EMB was aware of the existing programmes, capacity, strengths and expertise available, and wanted to explore the feasibility of announcing new policies by considering whether it would be possible to implement what was intended to later become policy.
56. This episode is but one example of Prof Morris' constant attempts/inclination to assume the worst about the EMB, Mrs. Law and/or Prof Li without having made any attempt whatsoever to ascertain or understand the underlying facts or reasoning. It also demonstrates his tendency to exaggerate and embellish his evidence in a sensationalist and misleading manner, for in his evidence-in-chief he claimed that the suspension of PolyU's role-differentiation was the equivalent of HKIED applying to UGC to start a medical school¹⁶¹. By that time, however, he must have known that that comparison was totally inapt, since HKIED had no experience in medicine whatsoever while PolyU was a well-known provider in the ECE field, as set out in Mrs. Law's 1st Witness Statement¹⁶². Yet he still persisted in doing so drawing this totally inapt comparison.

Conclusion: No EMB negativity towards HKIED on ECE

57. Given the above, ECE is clearly not an area in which EMB can be said to have targeted the HKIED in order to weaken it in some alleged attempt to force it to merge. If anything, the pattern of actions taken by the EMB from 2003 to 2006 clearly indicates that the EMB is keen to create and implement new initiatives and policies that have the effect of increasing the ECE "pie", and therefore HKIED's potential market share thereof.
58. In the circumstances, the natural, rational thing to do for HKIED's Senior Management would have been to survey the new marketplace and make efforts to maximise its market share, whether via 2+2, collaborative degrees, or other methods. However Profs Morris and Luk chose instead to act truculently and

¹⁶⁰ Morris, Day8/51:16-52:5; [458] [MLA-1/144].

¹⁶¹ Morris, Day5/115:16-21. [459]

¹⁶² Law 1st [W1/159-160/§§42-46].

petulantly and in line with their self-imposed siege mentality, by linking all of these matters to alleged pressure to merge, which is the subject of the remaining Chapters.

Executive Summary

- (1) *The evidence conclusively proves that the 200-200-0 PT ECE provision was a mistake stemming from a misunderstanding between EMB staff at the working level and which was not detected at a more senior level for entirely valid reasons. The notion that there was a conspiracy or cover-up of some sort is entirely far-fetched and totally unsupported by any evidence whatsoever.*
- (2) *The allegation that the EMB has been very negative about the HKIEd from 2003 onwards, and has been targeting it in various areas, especially vide its ECE programme, is entirely unsubstantiated:*
 - (a) *Events prior to the Start Letter indicate no basis for any finding or inference of negativity or bias towards the HKIEd.*
 - (b) *Prof Li and Mrs. Law's reaction to the furore over ECE places was logical, constructive, bold, and entirely in the interests of Hong Kong.*
 - (c) *The eventual decision to put out ECE places to tender in 2005 cannot be said to have been motivated by any negativity towards the HKIEd, while the results of the 2005 and subsequent tender cannot be "blamed" on the EMB.*
 - (d) *It was the 2005/06 ECE review process, and not any alleged negativity towards or hatred of HKIEd, that led to the May/June 2006 meetings and the request regarding PolyU's role differentiation.*
- (3) *There is no basis for saying that HKIEd's student numbers, whether ECE or otherwise, have been unfairly targeted, let alone for the purpose of making the HKIEd unviable and/or to force it to merge with another institution. On the contrary, EMB initiatives have opened up an entirely new ECE market to the HKIEd.*

CHAPTER 13

MERGER - INTRODUCTION

1. Leading Counsel for the Commission and Leading Counsel for Prof Morris and Prof Luk put various propositions regarding Prof Li's attitude towards the merger of HKIED with another higher education institution on Day 35¹ and Day 37² respectively.
2. These propositions must be put in the context that, following the Council retreats on 24 April and 5 June 2004, on 21 June 2004, the HKIED Council³:
 - (1) affirmed rejection of a full merger as defined in *Hong Kong Higher Education: Integration Matters* (“**the Niland Report**”)⁴ for HKIED; but
 - (2) affirmed support of the idea of institutional integration under the affiliation/federation models⁵; and indeed
 - (3) authorized the further exploration of the feasibility, desirability and form of deep collaboration with other local tertiary institutions conditional upon, *inter alia*, retention of autonomy by HKIED in academic matters, financial matters and governance and management.

There is no suggestion that, in voting for this resolution, any of the Council members acted under pressure or otherwise than in accordance with what they believed to be right and good for HKIED.

¹ Day 35/109:4-6; 109:8-10; 109:13-17; 109:19-21; 110:2-4; 110:14-16; 110:23-25; 111:8-11; 111:13-15; 111:17-20; 112:3-8; 114:8-10 & 116:1-6 [460]

² Day 37/18:18-22; 21:14-19; 23:19-24:4; 24:24-25:4; 25:20-22 & 26:4-8 [461]

³ Minutes of HKIED Council Meeting on 21 June 2004, §§12(c)-(f) & (j) [IEEM2/26/7-8] & Paper GC 17/2004 annexed thereto (Report on Council Retreats), §7 [IEEM2/28/12-14]

⁴ Niland Report, §2.11 [EMB5(1)/17/257]

⁵ Niland Report, §§2.22-2.23 [EMB5(1)/17/260]

3. Prof Li will, in Chapters 14 to 18, refute the allegation that he exerted any or any undue pressure on HKIEd to merge with another institution save where such allegation relate to the 1st Allegation and HKIEd's student numbers which will be dealt with separately⁶.
4. In short, what the evidence shows is that any such alleged pressure exists only in the imagination of Prof Morris and Prof Luk.

⁶ Chapters 3, 10-12 respectively

CHAPTER 14

INSTITUTIONAL INTEGRATION BY HKIED

1. The following facts really speak for themselves.
2. HKIED is a monotechnic tertiary institution with a single discipline in teacher education.
3. In March 2002, the UGC published *Higher Education in Hong Kong* (“**the Sutherland Report**”). In the concluding chapter entitled “*Looking to the Future: 10-year Horizon*”⁷, the Sutherland Report saw the higher education sector as aspiring to, *inter alia*, forming strategic collaborations and alliances⁸ with the HKIED being the only institution singled out for specific recommendations in §6.20:

“More specifically, the Hong Kong Institute of Education will develop collaborative links in Hong Kong to stimulate two particular advances. The first will be to create new degrees in teacher education in which two years of subject study will be combined with two years of pedagogical study, although not necessarily strictly in that order. Such a new pattern would complement current Bachelor of Education (B.Ed.) and Postgraduate Certificate in Education (PGCE) programmes, by allowing much greater flexibility and choice. The second advance will be to make available to students on current courses, a much greater range of subject or discipline based teaching than could be provided in the Hong Kong Institute of Education alone, for example by seeking science-base courses from the Hong Kong University of Science and Technology.”

4. Such recommendation is essentially premised upon the following:

⁷ [EMB5(1)/1/52-67]

⁸ [EMB5(1)/1/54-55/§§6.16-6.21]

- (1) that in addition to being trained in how to teach, students of teacher education also need subject or discipline based teaching;
 - (2) that HKIEd alone cannot provide or adequately provide such teaching⁹.
5. HKIEd was consulted by and had made written submissions to Lord Sutherland¹⁰.
 6. Following the Sutherland Report, to encourage deep collaboration among institutions and having obtained the approval of the Finance Committee of LegCo in December 2003, the UGC set up the Restructuring and Collaboration Fund with an initial sum of \$200 million per annum (expected to rise to \$400 million eventually)¹¹.
 7. In January 2004, the UGC articulated its thinking on how to carry forward the Sutherland recommendations in the roadmap document entitled *Hong Kong Higher Education: To Make a Difference, To Move with the Times*¹² which makes clear, *inter alia*, that
 - (1) The UGC values a role-driven yet deeply collaborative system of higher education where each institution has its own role and purpose, while at the same time being committed to extensive collaboration with other institutions in order that the system can sustain a greater variety of offerings at a high level of quality and with improving efficiency¹³.
 - (2) The UGC believes that the level and depth of collaboration and strategic alliances taking place in Hong Kong's higher education system was distinctly sub-optimal both for

⁹ Prof Li, Day 33/19:10-21:15 [462]

¹⁰ Sutherland Report, Appendix C [EMB5(1)/1/66]

¹¹ UGC notes of meeting with SEM on 9 January 2004 [EMB5(1)/14A/167-2 to 167-3/§5]

Prof Li, Day 33/153:4-154:7 [463]
[EMB5(1)/16/191-213]

¹³ Hong Kong Higher Education: To Make a Difference, To Move with the Times, Executive Summary, §(e) [EMB5(1)/16/193]

individual institutions and for the sector as a whole. It is incumbent upon the institutions to do much more in this area, not only to improve their quality but also to make the best use of the large amount of public funding made available to the sector¹⁴.

- (3) Strategic alliances should go well beyond one-off cooperation at a programme level but rather be long-term deep collaboration between institutions or even more robust integration between institutions. There is no reason why such strategic alliances should not range beyond deep collaboration through to full merger as circumstances and timing warrant¹⁵.

8. To implement its said vision, in January 2004, the UGC completed a review of the role statements of all 8 institutions under its purview. Two of the three themes running through all the new role statements¹⁶ are

- (1) that the UGC wishes to see much more active and deep collaboration among institutions, within and outside Hong Kong, and with the wider community to take forward their roles;
- (2) that there should be the most effective and efficient management of resources, through collaboration whenever it is of value¹⁷.

9. Aside from these common roles, the HKIED is specifically tasked to deliver degree programmes relating to secondary education “*whenever possible through strategic collaborations with other local tertiary institutions*”¹⁸. In this connection, in a letter dated 3 December 2003, Dr Alice Lam, Chairman of the UGC, briefed the CE that HKIED’s role required review in that secondary “core”

¹⁴ Ibid, §22 [EMB5(1)/16/201-202]

¹⁵ Ibid, §24 [EMB5(1)/16/202-203]

¹⁶ Ibid, Annex A [EMB5(1)/16/204-211]

¹⁷ Ibid, §23 [EMB5(1)/16/202]

¹⁸ Ibid, Annex A, Role Statement of HKIED, §(e) [EMB5(1)/16/208]

subject areas (like science, maths, etc.) should be done in deep collaboration with other universities¹⁹.

10. This is not a view unilaterally taken by the UGC of the HKIEd. On 1 September 2003, at a lunch with Dr Lam and Mr Michael Stone, Secretary General of the UGC, at which Prof Morris was also present, Dr Thomas Leung, Council Chairman of HKIEd, acknowledged that they would need to concentrate on what they did well (pre-primary and primary) and cut back on secondary, particularly subject areas²⁰.
11. In March 2004, the UGC published the Niland Report by which the Institutional Integration Working Party (“**IWP**”), though not recommending a further exploration of an immediate merger between CUHK and HKUST, has this to say by way of concluding remark:

*“One of the interesting insights provided by the international literature on institutional integration is that “merger is a process, not an event”. There is considerable wisdom in this observation and the Working Party certainly is of the view that successful integration will come where consultation with, and interaction between, the affected parties is of a higher order. **Yet the changing face of higher education in the region and globally will continue apace, irrespective of the time schedule within which the UGC and higher education institutions in Hong Kong see their reform agenda operating. There is a measure of urgency and the Working Party hopes to see significant progress before the onset of the 2005-08 triennium (and, of course, throughout it).**”²¹*

12. The message for deeper collaboration between institutions in a timely manner is repeatedly underscored by the dismissal of the so-called Status Quo “Model”:

¹⁹ EMB5(1)/13A/163-2

²⁰ UGC note for file dated 3 September 2003, §2, 2nd. [E2/31/145]

²¹ Niland Report, §4.44 [EMB5(1)/17/293-294]

- (1) *“for higher education institutions, at least those that aspire to the upper echelons of performance and recognition, the status quo is a **mirage**”*²²;
- (2) *“In another sense the status quo **does not exist at all**, for the environment being encountered by universities is changing so profoundly that universities constantly face and address the unencountered. In a competitive environment, a simple philosophical point is that if some universities embrace the more robust end of the institutional integration continuum, then the other end is not the status quo that it was - it too has changed. This is to say that a key disadvantage of the so-called Status Quo “Model” is that it is **not really an option because technically it does not exist**, at least for universities seeking to preserve, let alone advance, their interests”*²³;
- (3) *“The status quo implies that current arrangements are preserved, and in terms of institutional integration this would mean that the character of higher education institutions, and their inter-relationships, is held constant. Such an approach is Canute-like and, as such, totally unacceptable in the eyes of the Working Party given the changing scene and the challenge to be faced. The Status Quo “Model” is hypothesised primarily for the purpose of rejecting it as in any way desirable or defensible.”*²⁴

13. HKIED itself has been keenly aware of the challenges it faces.

14. Following the release of the Sutherland Report,

- (1) on 11 December 2002, HKIED established a Task Force on the Future Development of the HKIED (“**the Future Task Force**”)²⁵, of which Prof Morris was a member;

²² Ibid, Preface, 1st paragraph [EMB5(1)/17/238]

²³ Ibid, §2.37 [EMB5(1)/17/264]

²⁴ Ibid, §4.32 [EMB5(1)/17/290]

²⁵ Report of Future Task Force, §3 [IEEM1/20/148] & Terms of Reference [IEEM1/21/165]

- (2) on 23 February 2003, a Focus Group on Long-term Role and Positioning (of which Prof Morris and Prof Luk were members) was formed²⁶ to examine and deliberate on, *inter alia*, the possibility of wider and deeper institutional collaborations²⁷;
- (3) in February 2004, the Future Task Force recommended, *inter alia*, the following²⁸:
 - (A) HKIED should continue to position on its traditional areas of strength and seek forms of collaboration with other UGC institutions which will allow it to strengthen its capacity to achieve its mission in the most cost effective manner;
 - (B) HKIED should continue to work collaboratively with other institutions on specific subjects such as those with small intakes but demand significant resources in order to better manage resources (e.g. Physics and Maths);
 - (C) any UGC proposal on strengthening bilateral cooperation and forming of alliances with other institutions should be welcome and explored.

15. Then, following the release of the Niland Report,

- (1) on 24 April and 5 June 2004, with a view to advising its Council on the way forward regarding the form and possibility (if any) of deep collaboration with other institution(s), HKIED underwent 2 retreats and emerged with the consensus that institutional integration under the affiliation/federation model with autonomy in academic matters, financial matters and governance and management was worth exploring²⁹;

²⁶ Ibid, §4 [IEEM1/149] & Terms of Reference [IEEM1/21/166]

²⁷ Ibid, §13, 1st paragraph (vii) [IEEM1/20/151]

²⁸ Ibid, §16B (“Collaboration and alliance with other UGC-funded institutions”) [IEEM1/20/153]

²⁹ Report on Council Retreats [IEEM2/28/11-15]

- (2) on 21 June 2004, the HKIEd Council approved the implementation arrangements for the recommendations of the Future Task Force³⁰ as well as passed the resolution mentioned at Chapter 13, §2.
16. On 9 July 2005, HKIEd signed with CUHK a Deep Collaboration Agreement in the area of teacher education³¹, under which there has been just one joint E.Ed. degree programme in English and Education with an annual intake of 40 students (20 to each institution) launched in the 2006/07 academic year. To put this intake figure in context, the total FYFD intakes for all TEIs and for HKIEd for 2006/07 are 726 and 468 students³² respectively.
17. The last recommendation of the Sutherland Report was for the UGC to conduct another review of higher education in Hong Kong 5 years from now to assess, inter alia, the implementation of specific recommendations in the report³³.
18. 5 years have passed since the Sutherland Report.

³⁰ Minutes of HKIEd Council meeting on 21 June 2004, §10(e) [IEEM2/26/5]

³¹ [ML-A2/45/426]

³² Planned First Year Intake of UGC-funded Teacher Education Programmes 2005/06 to 2007/08 [UA/180-1]

³³ Sutherland Report, Recommendation 12 [EMB5(1)/1/157]

CHAPTER 15

PROF LI & INSTITUTIONAL INTEGRATION

Prof Li's stated position

1. Prof Li's stated position on institutional integration can be articulated as follows:
 - (1) We live in a competitive world. If one is complacent and stays put, a lead today will be eroded tomorrow by others who move forward. The tertiary education sector is much more so with the trend of cuts of public funding³⁴.
 - (2) While the Government cannot prefer one institution to the others, the Government can legitimately lend more support to an institution which is doing something “new”, “novel”, “different” or “good for Hong Kong”³⁵. However, before such extra support is made available, the institution should demonstrate a track record and meet milestones³⁶.
 - (3) He believes institutional integration is one way forward in this direction and he would like to see strategic alliances built up between institutions³⁷.
 - (4) His end point is not to reduce the number of universities in Hong Kong although a reduction in the number of universities may occur as an incidental consequence when 2 institutions proceed to a full merger³⁸.
 - (5) Despite the fiscal difficulties faced by Hong Kong and the Government in the past years and the potential savings in the

³⁴ Prof Li, Day 33/56:20-58:15 [464]

³⁵ Prof Li, Day 33/12:22-13:20; 58:11-15 [465]

³⁶ UGC notes of meeting with SEM on 9 January 2004, §5 [EMB5(1)/14A/167-3];

Prof Li, Day 33/155:19-156:24 [466]

³⁷ Prof Li, Day 33/26:3-5 [467]

³⁸ Prof Li, Day 33/14:14-16:2; Day 37/22:1-16 [468]

long term, institutional integration is not to be pursued to cut costs. Indeed, institutional integration costs money at the initial stage before savings can be realized in the long term³⁹.

- (6) His objective is to improve the quality of teaching and research⁴⁰, and to provide more learning opportunities to the students.
- (7) He is aware that there is a “merger” continuum. As the policy secretary responsible for education, he has no preconceived preference for any particular form of association or how far the institutions should take it. In particular, he does not think that only a full merger and nothing less will do. It is a matter for the institutions concerned to work out⁴¹. It follows that he never insists upon a full merger⁴². It does not even have to be exactly as a Niland model⁴³. He is amenable to a federal model. He is equally amenable to a deep collaboration if they are purposeful programmes, progressing one after another⁴⁴.
- (8) Nor does Prof Li have any fixed view as to how the institutions should be paired up⁴⁵.
- (9) Institutional integration must be achieved on a voluntary basis. Prof Li does not believe in forcing a merger upon any institutions⁴⁶. Even if 2 institutions come back and decline to work with each other, he would accept it⁴⁷.

³⁹ Report of Taskforce of CUHK to Advise on Institutional Integration (“CUHK Integration Report”), §3.34 [EMB14/1261]; Prof Li, Day 33/39:16-40:13 [469]

⁴⁰ Prof Li, Day 33/42:1-9 [470]

⁴¹ Prof Li, Day 33/26:6-7; 78:25-79:3; 81:22-82:20; 94:10-95:6; 97:21-98:15; 122:15-16; 196:7-19; 200:2-13; Day 34/41:10-12 [471]

⁴² Prof Li, Day 33/196:20-197:8; Day 35/23:6-24:4 [472]

⁴³ Prof Li, Day 33/95:2-3 [473]

⁴⁴ Prof Li, Day 35/24:11-15 [474]

⁴⁵ Prof Li, Day 33/200:2-13 [475]

⁴⁶ Prof Li, Day 33/26:7-9; 98:5-15 [476]

⁴⁷ Prof Li, Day 33/196:25-197:2 [477]

- (10) He sees himself as and plays the role of a facilitator if 2 institutions express an interest in pursuing integration. He would encourage them and help them along⁴⁸. He puts it in terms of a duty/ obligation⁴⁹.

What the other witnesses say

2. As Prof Li observes⁵⁰, Prof Morris is the only witness to whom he has allegedly insisted upon a full merger. All other witnesses who are able to speak on the matter perceive Prof Li as having an open mind and being flexible about institutional integration generally as well as where HKIED is concerned:

- (1) UGC:

- (A) Dr Lam:

“... the SEM is generally favourably disposed to the question of a merger or deep collaboration between the HKIED and another institution. However, my reading of the SEM’s position has always been that, while he would like to see a merger, he will not force a merger. He would like to see the HKIED (and other institutions) move as far as possible in that direction. But he has not made merger a condition for continued funding to the HKIED.”⁵¹

“A. I cannot pinpoint to say that one option is the only option. There are five options in the Niland definition. The last option, status quo.

⁴⁸ Prof Li, Day 33/98:5-15; 135:21-136:3; Day 34/41:5-16 [478]

⁴⁹ Prof Li, Day 33/112:23-113:2; 120:24-121:2 [479]

⁵⁰ Prof Li, Day 33/200:20-21 [480]

⁵¹ Dr Lam’s Statement, §5 [W1/27/224]

- Q. That was out?*
- A. That was out. Everybody agreed with that. But then as regards full merger, federation, deep collaboration and then loose federation, I think he did not express to me that only one of those models fit.*
- Q. What I want to find out from you, really, is this. A lot of evidence would suggest that he wanted full merger if possible; would that be fair?*
- A. That would not be fair.*
- Q. It would not be fair? What would be a fair answer?*
- A. Because he didn't say that to me. If I'm only a little secretary in the secretariat, fine, but I'm the chairman. If he did not say that to me, I cannot take on board that full merger is the only way.*
- Q. But would you at least agree that full merger would be his preferred model?*
- A. I have not questioned or do I get that impression from him, because we are working a lot on deep collaboration and also the famous dinner, it was also about federation. He did not say that – he did not say to me that all this is irrelevant.”⁵²*

(B) Mr Stone:

“... the SEM believes strongly that it would be in the long term interests of teacher education provision in Hong Kong, and the HKIED itself, if HKIED could integrate in some way with (an)other institution(s)”⁵³

⁵² Dr Lam, Day 23/6:8-7:6 [481]
⁵³ Mr Stone's Statement, §4 [W1/26/219]

“I can’t remember him saying to either I or Dr Lam, “Merger must happen.” It is just that his overall thrust was that, in my view, he believed merger was the way to go and we should all be striving for it.”⁵⁴

(2) CUHK:

(A) Prof Lawrence Lau:

“Q. At the meeting, Professor, is it correct to say that while Prof Morris was keen on the federal model, Prof Arthur Li was not, and he was keen on the Institute merging with the Chinese University?”

A. I do not think that would be a correct characterisation. I think my sense is that Prof Arthur Li would have supported anything, any deep collaboration effort that would be agreeable to both institutions.

Q. Why do you say that?

A. I think Prof Arthur Li has always been supportive of deep collaboration.

Q. But what I mean is why do you say that at that particular dinner he would have supported any model?

A. No, I think in general he would have supported any model. That includes at the dinner.

Q. Why do you say that? Because I thought you told us that you had no discussion with Prof Arthur Li on this topic at all.

A. I had no discussion with Prof Arthur Li on merger, but his position on deep collaboration as well as that of the UGC is well known. There is very supportive of deep collaboration among UGC institutions in Hong Kong and we

⁵⁴

Mr Stone, Day 21/29:7-10 [482]

have other deep collaboration efforts going on with other institutions.”⁵⁵

(B) Prof Kenneth Young:

“A. *From what I have heard, I believe the position of the SEM, and I believe that is also the official position of the Government, is that something needs to be done at the HKIEd to improve its quality, and the range of options were many, but that some form of affiliation with another university might be a way that ought to be explored. That is my understanding of the Government’s position and the SEM’s position.*

Q. *Going back to the few occasions that you might have chatted about this with the SEM, what was your impression of – or perhaps I should put it this way: what is your recollection as to how he saw this going in terms of the IEd and the institutional integration?*

A. *I do not have any specific recollection, these being very casual encounters, if any, but my general impression was that he would be supportive of anything proposed by the institutions concerned. That was along that direction.*

Q. *Has he given any indication to you that if they are not willing then he would need to do something about it from the Government to force that to happen?*

A. *Not at all.*”⁵⁶

“... *we had known that the SEM would be supportive of any initiative that would be developed by the*

⁵⁵ Day 24/15:25-16:23 [483]

⁵⁶ Day 24/83:23-84:19 [484]

two institutions. Had he said otherwise, I would certainly make a note.”⁵⁷

(3) HKIED: Dr Leung:

“One thing I must say. For all my years in the Institute, for all my years as council chairman, I have not heard Prof Arthur Li tell me, “You must have a merger. You must be taken over by another university.” All the time I have heard from him, “The situation in the Institute is not good. There are problems in terms of the future development.” The Government have certain expectations about what we do and what we can do, and the Government expects us to actually do more. So he always tells us about working together with other universities and some form of integration, whether it is federal arrangement, whether it is deep collaboration or whatever.

He never said to me, “You must have a merger.” He never, never said that to me. If he had ever said something like this to me, I would have told him, “Arthur, we are not going to have a merger. It is not going to work. It is not what our council decided. I disagree.” That’s what I would have told him. But he never said something like this to me”⁵⁸

“Well, his general attitude is he would like to see, you know, some form of merger in the form like federations or whatever, but it would be up to us to negotiate. If we need him to facilitate, that is to help remove some obstacles like funding or some other arrangements, he would be very happy to come in and help to remove those obstacles if he could. But other than that, it’s up to us to negotiate.

⁵⁷ Day 24/137:25-138:3 [485]

⁵⁸ Day 26/132:5-24 [486]

So that has been his attitude throughout.”⁵⁹

“Q. I think you know better than that. They wanted full merger, didn’t they?”

A. No. I have no knowledge that Government actually wants a full merger, because nobody in Government has ever told me that the Hong Kong Institute of Education must be taken over, absorbed in the form of a full merger by other universities.

Q. In fact, according to you, Prof Li certainly would never use “merger”, because if he had used the word, you would have told him, “Look, Arthur, it won’t work.” Right?

A. As far as my knowledge is concerned, Government always wanted some form of merger. But even that is subject to negotiations between institutions.”⁶⁰

Prof Li’s conduct in institutional integration involving other institutions

3. There is an overwhelming body of **indisputable/undisputed and documented** evidence showing or tending to show that Prof Li’s said stated position reflects his true position.
4. Following the announcement of his appointment as SEM,
 - (1) Prof Li raised with the institutions the question whether they would be prepared to integrate with other institutions.
 - (2) Some institutions (such as LU) simply did not want to integrate. Prof Li left them alone. He regarded each institution as being responsible for its own strategic direction. Some (e.g. PolyU and CityU) indicated interest but could not

⁵⁹ Day 27/106:7-15 [487]

⁶⁰ Day 28/196:21-197:6 [488]

find a partner which reciprocated. Prof Li left them alone too⁶¹.

5. With regard to the only institutions that emerged as having a mutual interest in each other namely, CUHK and HKUST⁶², by a letter dated 8 October 2002⁶³ to Prof Paul Chu, the President of HKUST, copied to the Professor Ambrose King, then Vice-Chancellor of CUHK, and Dr Lam, Prof Li said this:

*“As Secretary for Education and Manpower, I have indicated in public the Administration’s keen support for further exploration of the possibility of an integration of the Chinese University of Hong Kong and the Hong Kong University of Science and Technology. I hope this would **facilitate** the ongoing discussion between the two institutions.*

*While I would not underestimate the complexity of the issues involved and the need to consult the various parties concerned, I do hope that your deliberations would result in initiatives that help elevate the standard of tertiary education in Hong Kong. **The exact timing of any integration and the details would of course have to be worked out among the two institutions.** The Administration, working together with the University Grants Committee, stands ready to contribute in any appropriate manner to a smooth and successful exercise that would bring about benefits to society as a whole.”*

6. In an informal visit to HKUST in February 2003, Prof Li stated openly that :
 - (1) *“The unequivocal objective of the Government in support of a merger is to build a world-class comprehensive research university in Hong Kong”;*

⁶¹ Prof Li, Day 33/23:25-25:16; 135:11-20; 196:25-197:2 [489]

⁶² Prof Li, Day 33/25:5-9 [490]

⁶³ [EMB14/1243]

- (2) “Additional resources commensurate with such an objective will be provided”;
- (3) “The highest academic standards will be upheld through a viable and **mutually agreed mechanism**”;
- (4) “Any merger will be based on an effective **model of integration that will respect the unique cultures of HKUST and CUHK**”;
- (5) “there will be **no forced merger**”⁶⁴.

These represented Prof Li’s attitude towards merger⁶⁵.

7. Prof Li received reports from the 2 institutions setting out their views and recommendations on the proposed integration in March/April 2003. While both reports recognized the potential benefits of an integration, they also highlighted areas that would require further deliberation, including the model of integration⁶⁶.
8. By a letter dated 4 April 2003, Prof Li invited the UGC “to undertake more detailed examination of the potential benefits, financial and staffing implications, and possible approaches to the proposed integration, **to discuss with the institutions concerned, and to make recommendations on the way forward**”, bearing in mind that “the ultimate objective must be to improve the quality and competitiveness of higher education in Hong Kong, with a view to positioning Hong Kong as the education hub in the region”⁶⁷.
9. It was in response to this invitation that in August 2003, UGC set up the IIWP⁶⁸ which was tasked to

⁶⁴ Open letter from HKUST Council Chairman and President to staff, students and alumni of HKUST dated 28 February 2003 [EMB14/1295]

⁶⁵ Prof Li, Day 33/97:2-6 [491]

⁶⁶ Letter dated 4 April 2003 from Prof Li to Dr Alice Lam, 2nd paragraph [EMB5(2)/492]; CUHK Integration Report [EMB14/1244-1295]

⁶⁷ Ibid, 3rd & 4th paragraphs [EMB5(2)/492-3]

⁶⁸ Letter dated 25 August 2003 from SG/UGC to Prof Li [EMB5(2)/500-501]

- (1) *“explore the feasibility of the idea of institutional integration in the university sector of Hong Kong, and in this respect, enunciate its possible objectives, potential benefits and likely difficulties, taking into account the needs of Hong Kong and recent international experience with institutional integration”*;
- (2) *“identify the key potential benefits and drawbacks of possible institutional integration involving CUHK and HKUST, and potential related elements and institutions”*;
- (3) *formulate for consideration by the UGC at its January 2004 meeting advice which will enable the UGC to make recommendations to the Government at an early stage thereafter”*; and
- (4) in addressing the above tasks, to
 - (A) *“consult closely with CUHK and HKUST”*;
 - (B) *“bear in mind that the ultimate objective must be to improve the quality and competitiveness of higher education in Hong Kong, with a view to positioning Hong Kong as the education hub in the region”*;
 - (C) *“take into account overseas experience on integration of higher education institutions, including both success and failure cases” and “make reference to the different integration models that have been tried out, and their respective advantages and drawbacks”*⁶⁹.

10. Prof Li asks the Commission to note the following:

- (1) He did not see the proposed integration between CUHK and HKUST as being any less consistent with the vision set out in the Sutherland Report because the institutions had left the

⁶⁹ Niland Report, Appendix 1, Part A: Terms of Reference [EMB5(1)/17/296]

model of integration open-ended⁷⁰. He himself did not have any model in mind⁷¹. He would not welcome it any less if the end point was not a full merger⁷². He did not expect that there would be a full merger⁷³.

- (2) Prof Li did not take the matter into his own or the Government's hands. He entrusted it to the UGC (the independent buffer between the Government and the institutions) which, in turn, passed the issues to a likewise independent working party led by a distinguished overseas member of the UGC who would be neutral in the matter and over whom Prof Li has no control whatsoever. He wanted unbiased advice. He would not have taken this course if he had not kept an open mind and had harboured any pre-determined conclusion⁷⁴.
- (3) Prof Li did not meet up with or make any submission to the IIWP. The working party had a complete free hand⁷⁵.
- (4) In contrast, he expressly required the 2 institutions to be consulted, which they were⁷⁶.
- (5) His ultimate objective is the improvement of the quality and competitiveness of higher education in Hong Kong.
- (6) Far from taking for granted the magic of institutional integration, he wished to be informed of all pros and cons (illustrated by examples of failed integration) and most important of all, whether it should be undertaken and, if so, how.

⁷⁰ Prof Li's letter of 4 April 2003, 3rd paragraph [EMB5(2)/492]

⁷¹ Prof Li, Day 33/122:15-16 [492]

⁷² Prof Li, Day 33/123:19-21 [493]

⁷³ Prof Li, Day 33/123:21-124:8 [494]

⁷⁴ Mr Stone's letter of 25 August 2003 [EMB5(2)/500 to 500-1] which re-inforced the neutrality of both the Convenor of IIWP and UGC

Prof Li, Day 33/124:9-19; 126:2-127:7; Day 37/17:19-18:1 [495]

⁷⁵ Prof Li, Day 33/126:13-20 [496]

⁷⁶ Niland Report, §1.10 [EMB5(1)/17/248]

11. In August 2003, in the context of a possible merger between CUHK and HKUST with HKIEd having expressed a wish to explore a possible merger with CUHK and to prepare the CE for a meeting with the UGC on 19 August 2003, Prof Li advised the CE to make the following points:
- (1) *“The Administration supports proposals from the institutions of complimentary strengths to merge, in order to enhance the quality of teaching and research, increase students’ choices, build up a critical mass in areas of excellence, and create institutions capable of competing at the highest international level.”*
 - (2) *“The Government supports the possible integration of CUHK and HKUST but fully respects the academic freedom and institutional autonomy of universities.”⁷⁷*
12. At his meeting with the UGC on 20 August 2003 (at which Prof John Niland was also present), Prof Li stated that he adopted an open mind on institutional integration though at the same time noting the increasing importance for institutions to collaborate with one another to develop a critical mass and build up extra capacity for further advancement, given scarce resources and agreed that the focus of the IIWP should be on how institutional integration would help Hong Kong in enhancing its overall competitiveness in higher education⁷⁸.
13. On a similar note, the speech prepared by Prof Li⁷⁹ and EMB for the CE on the occasion of CUHK’s 40th Anniversary included the following message (which did represent Prof Li’s personal view⁸⁰):

“It is important that while there is less money to spend, every university should build on its strengths and be more

⁷⁷ Brief for CE for meeting with UGC on 19 August 2003 [EMB5(1)/11A/155-1 to 155-3] cleared and personally endorsed by Prof Li
Prof Li, Day 33/85:3-4; [497]

⁷⁸ UGC notes of meeting with Prof Li on 20 August 2003, §6 [EMB5(1)/12/158]

⁷⁹ Prof Li, Day 33/127:16-128:15 [498]

⁸⁰ Prof Li, Day 33/129:9-10 [499]

*focused. University heads should also be given greater flexibility in the way they spend the funds that are allocated to them. You, after all, are the best judges of how best to spend the money your institution has. There should be more trust and less control; **more collaboration and less duplication** as the institutions, the UGC and Education and Manpower Bureau work together to pursue the common goal of excellence.*

*On the question of institutional integration, let me say that integration can only happen if integration is to the benefit of the community as a whole and let me emphasize, **only if both parties are willing**. There is no intention on the part of Government to force institutions to integrate. Indeed, among the eight institutions **there can be far more collaboration** to maximize institutional strengths and the use of resources.”⁸¹*

14. In March 2004, the IIWP formally reported, inter alia, that the time was not ripe for the integration of CUHK and HKUST⁸². Prof Li accepted such conclusion⁸³. And that was the end of the matter of the integration of CUHK and HKUST⁸⁴. In his words, “the matter has been examined rationally, looked at rationally, discussed rationally, came to a conclusion”⁸⁵. Also, speaking of HKUST, “[they] were all set to go and they turned around at the end and said, “No, we’re not”, and that’s the end.”⁸⁶
15. With regard to the proposed CUHK-HKUST integration, much time has been spent on the “權在我手，先禮後兵” (“with power in my hands, first courtesy then war”⁸⁷) remarks made by Prof Li at the tea party for the media on 4 October 2002. These remarks should be put in their proper perspective,

⁸¹ [EMB5(1)/14/166]

⁸² Niland Report, Recommendation 4 [EMB5(1)/17/285]

⁸³ Line to take as cleared by Prof Li [EMB5(2)/509]

Prof Li, Day 33/129:18-130:15 [500]

⁸⁴ Prof Li, Day 33/130:16-19 [501]

⁸⁵ Prof Li, Day 35/190:5-8 [502]

⁸⁶ Prof Li, Day 35/192:1-3 [503]

⁸⁷ Adopting translation used in Prof Luk’s 10,000 word letter [CB/4/15-6/§14]

- (1) Prof King and Prof Chu had been in informal discussion on closer cooperation including integration and merger, of which the senior members of the institutions had been kept informed⁸⁸.
- (2) Prof Li was advised that the senior management of HKUST were fairly unanimous in desiring some form of integration with CUHK and whereas for CUHK, there was a two-thirds majority in favour⁸⁹.
- (3) Both heads independently and together told Prof Li that, for fear of being accused of or misunderstood for selling out his institution to the other, they would find it difficult to bring the discussion on integration forward to their staff and students without a very clear, strong and determined statement from the Government that it wanted a merger and was determined to bring it about⁹⁰.
- (4) Prof Li agreed to stick his neck out, so to speak⁹¹. He saw it as his obligation to assist because it was something good for Hong Kong⁹².
- (5) He did not call a press conference or issue a formal press release for this specific purpose. He deliberately chose an informal and lighthearted occasion to bring up the proposed integration of CUHK and HKUST, among other things⁹³.
- (6) He was asked by 2 heads of institutions to come up with a very strong statement that the Government wanted an integration of CUHK and HKUST and he was responding to that in the most lighthearted manner that he could to get that message out for them⁹⁴.

⁸⁸ CUHK Integration Report, §1.5 [EMB14/1248]; Prof King's open letter dated 6 October 2002, page 2, middle paragraph [EMB14/1308]

⁸⁹ Prof Li, Day 33/106:5-16; Day 35/179:5-7 [504]

⁹⁰ Prof Li, Day 33/106:16-108:10; 110:21-111:4 [505]

⁹¹ Prof Li, Day 33/108:11-17 [506]

⁹² Prof Li, Day 33/113:4-7 [507]

⁹³ Prof Li, Day 33/109:13-24; Day 34:94:8-13 [508]

⁹⁴ Prof Li, Day 34/95:8-12 [509]

- (7) He did not prepare any script or a line to take⁹⁵.
- (8) Upon being pressed by the reporters⁹⁶, he made the remark objected to in jest, intending them to be a repartee/joke and to be taken as such⁹⁷. This is not a recently invented explanation:
- (A) He did elaborate on the same occasion that “兵” did not mean force or administrative order but proactive participation and lobbying. Unfortunately, only one report picked up this point⁹⁸.
- (B) He said so to Dr Lam at the time⁹⁹.
- (C) He clarified his meaning again at a press conference on 7 October 2002¹⁰⁰.
- (D) He clarified again before the LegCo Education Panel on 18 November 2002, stressing that the Government could not force the 2 universities to merge¹⁰¹.
- (9) Prof King, having been pre-warned by Prof Li, lost no time in issuing a keen and enthusiastic open letter¹⁰² on 6 October 2002, the day after the news report of the tea gathering.
- (10) Prof Chu, not having been forewarned¹⁰³, expressed regret at the timing of Prof Li’s announcement which did not allow him the opportunity to alert his colleagues but not what Prof Li said¹⁰⁴.

⁹⁵ Prof Li, Day 34/92:3-6 [510]

⁹⁶ Prof Li, Day 34/92:16-18 [511]

⁹⁷ Prof Li, Day 33/109:25-110:17; Day 34/93:8-14 [512]

⁹⁸ Commercial News, 5 October 2002 issue, 4th & 5th paragraphs [N2/53]

⁹⁹ Dr Lam, Day 23/9:7-12 [513]

¹⁰⁰ Wen Wei Po, 8 October 2002 issue, 3rd & 4th paragraphs [N2/89]

¹⁰¹ Minutes of LegCo Education Panel on 18 November 2002, §32 [EMB14/1320]
¹⁰² [EMB14/1307-1309]

¹⁰³ Prof Li, Day 35/178:16-179:9 [514]

¹⁰⁴ Apple Daily, 9 October 2002 issue, lower left hand corner [N2/98]

16. Most importantly, **action speaks louder than words**. In the matter of the proposed CUHK-HKUST integration, Prof Li waged **no war** and accorded to both institutions the **utmost courtesy**.

Where HKIEd is concerned

17. Turning to HKIEd, the evidence shows that Prof Li adopted the same approach as he did in the proposed integration of CUHK and HKUST.
18. First, Prof Li presented the same consistent view on institutional integration to the HKIEd Council on 28 November 2002, in particular, that
- (1) *“it was time for [HKIEd] to think strategically about its future positioning and development opportunities under the current context, which included the Government’s financial situation, the recommendations in the Higher Education Review and the demand for teachers”*;
 - (2) HKIEd should *“explore different options for expansion or further development despite the budget constraints”*;
 - (3) *“it was not wrong to start dialogues with other institutions to consider the pros and cons of working together for the same goal, given that [HKIEd] and [CUHK] were both the result of amalgamations”*;
 - (4) *“it was up to [HKIEd] to consider and decide on the partner as well as the form of any future collaboration”*;
 - (5) *“the Government was prepared to put in additional resources to facilitate a merger or amalgamation as it would achieve long-term financial savings and social benefits”*;

- (6) “students would have wider choices, more networking and interactions if different institutions were seriously working together”;
- (7) “if Hong Kong was to be the hub for education in the region, there had to be a critical mass of academics in different disciplines which was capable of exerting influence”; and
- (8) “resources would be protected for any institutions actively pursuing a merger/collaboration”¹⁰⁵.
19. Second, in response to Prof Morris’ letter of 28 February 2003 on institutional collaboration and integration to Dr Alice Lam copied to him¹⁰⁶, Prof Li suggested to the UGC the same sort of procedure to take forward Prof Morris’ idea, namely the setting up of a sub-committee or appointment of a facilitator by the UGC along the objectives and broad directions laid down in the Sutherland Report¹⁰⁷.
20. Third, at the meeting with Dr Edgar Cheng, Council Chairman of CUHK, and Dr Thomas Leung, Council Chairman of HKIED, at the Hong Kong Club, Prof Li indicated that “so long as HKIED decides to go ahead, he would support which institutions with and which model”¹⁰⁸.
21. Lastly, as late as 17 December 2005, on the question of student numbers in the context of the 3-3-4 reform,
- (1) Prof Li said to Dr Lam and Mr Stone that although EMB considered ‘2+2’ degrees (which HKIED can provide only through collaboration with other institutions) to be better than B.Ed. degrees (which is non-collaborative), he did not wish to impose EMB’s view on HKIED.

¹⁰⁵ Minutes of HKIED Council Meeting on 28 November 2002, §§1(a)(iii), (iv), (v), (vi), (vii), (ix), (x) & (xvii) [IEEM1/11/78-80]

¹⁰⁶ [EMB5(1)/10/152]

¹⁰⁷ Draft copy of letter dated 6 March 2003 from Prof Li to C/UGC [EMB5(1)/11/155] approved by Prof Li; Prof Li, Day 33/90:18-91:9 [515]

¹⁰⁸ Ms Kat Ma’s note [IE4/350]; Prof Li, Day 33/200:2-13 [516]

- (2) He encouraged the UGC to get HKIEd to think out of the box on what would be the best way for training teachers in Hong Kong.
 - (3) If HKIEd could come up with a fully justified proposal, he was prepared to go along with (non-collaborative) B.Ed. degrees and guarantee no redundancy for HKIEd for 2 triennia¹⁰⁹.
22. Prof Li's position on the merger of HKIEd with another higher education institution is the same as that of the Chief Executive, as is apparent from his advice to Dr Leung at their meeting on 4 August 2006¹¹⁰ that he would like to see the integration proceed as soon as possible given the benefit that it could bring to Hong Kong. Prof Li has no personal agenda.

¹⁰⁹ UGC Note for file dated 19 December 2005 [E2/34/244-245]

¹¹⁰ Notes of meeting [EMB5(2)/41/452]

CHAPTER 16

FORCING OF A FULL MERGER INHERENTLY IMPROBABLE

1. In the light of the indisputable/undisputed evidence as to Prof Li's stance on institutional integration in general and in relation to the HKIED in particular, to allege that Prof Li exerted pressure on the HKIED towards a full merger is to accuse him of **duplicity**. This is a very serious charge against a minister. It must be proved to the **stricter** standard of proof.
2. One objective test for assessing the credibility of a factual contention is to see whether it is inherently plausible or implausible.
3. This chapter sets out the reasons why the allegation that Prof Li would not be satisfied by anything less than a full merger of HKIED and CUHK and tried to impose the same on HKIED, Prof Morris and/or Dr Leung is **inherently implausible** and therefore **highly improbable**.
4. First, Prof Morris had intimated to Prof Li fairly early on that if CUHK and HKUST were to be integrated, he would not want HKIED to be left out¹¹¹. This part of Prof Li's evidence is not disputed. The proposal to integrate CUHK and HKUST became public on 4 October 2002.
5. On 28 November 2002, prior to Prof Li's presentation to the HKIED Council, he together with Dr Lam had lunch with Prof Morris and other staff of HKIED. Prof Morris said to Prof Li and Dr Lam that gaining self-accreditation for HKIED would facilitate an equal status of the HKIED with the other institutions in the discussion of merger or deep collaboration. Dr Lam's evidence on this¹¹² is not challenged.
6. Prof Li was also aware of the following developments following

¹¹¹ Prof Li, Day 33/70:14-71:5 [517]

¹¹² Dr Lam's Statement, §6(1) [W1/27/224]

his presentation to the HKIED Council on 28 November 2002, which led him to believe that HKIED was approaching the issue of institutional integration with an open mind:

- (1) the establishment by HKIED of the Future Task Force in December 2002 to review and make recommendations on issues which included “*exploring the form and benefits (if any) of integrating and/or collaborating with other institutions*”¹¹³;
 - (2) the message by HKIED to UGC that its Council had always approached the issues of, *inter alia*, collaboration and strategic alliances with an open mind and the invitation to UGC to initiate a discussion of the questions relating to collaboration and integration and to involve a senior international scholar to serve as a facilitator¹¹⁴;
 - (3) the extension of the remit of the IIWP to look at the overall question of feasibility of institutional integration in the university sector of Hong Kong¹¹⁵.
7. These were the bases upon which, in August 2003, Prof Li briefed the CE that HKIED wished to explore further collaboration with other institutions in the delivery of teacher education programmes, and possible merger with CUHK¹¹⁶.
8. At a lunch with Dr Leung and Mr Alfred Chan, Deputy Council Chairman of HKIED, on 14 October 2003, the Council officers
- (1) asked Prof Li and Mrs Law whether there was any plan to merge CUHK and HKIED;
 - (2) indicated that Dr Leung had spoken to Prof Niland on the integration of institutions; and

¹¹³ EMB internal email dated 11 December 2002 & attachment [EMB5(1)/8/149-151] & Prof Morris’ letter dated 28 February 2003 to Dr Lam (copied to Prof Li) [EMB5(1)/9/152]

¹¹⁴ Ibid

¹¹⁵ UGC notes of meeting with Prof Li on 20 August 2003, §5 [EMB5(1)/12/157]

¹¹⁶ Brief to CE dated August 2003, §(7), “Background”, 5th bullet point [EMB5(1)/155-2]

(3) expressed hope to have a clearer idea of the way forward after the UGC meeting in January 2004,

thereby giving Prof Li the impression that HKIED was keen to further explore institutional integration¹¹⁷. This was in fact the intention intended to be given to Prof Li¹¹⁸. From the time of that lunch through to January 2004, nothing happened which would have changed Prof Li's impression that HKIED was pursuing integration¹¹⁹.

9. In view of these events, pending the Niland Report, there was no reason why Prof Li should and he did not see any need to push HKIED¹²⁰.
10. This conclusion is reinforced by the fact that despite HKIED's expression of interest, at the time, the focus was really on the proposed integration of CUHK and HKUST. The CUHK Integration Task Force had expressly not considered the possibility of joining up with HKIED as well "*in order not to confuse the issue and lose focus*"¹²¹. Being a recipient of the CUHK Integration Report, Prof Li was well aware of CUHK's sentiment towards HKIED¹²².
11. Second, Prof Li was aware of the difficulties of integration¹²³. He was also aware that there was a merger continuum and did not expect a total and full merger to be achieved in one go but was "*a question of process of how one moved forward*"¹²⁴.
12. In this regard, Prof Li was further informed by the Niland Report which advised against the further exploration of an immediate

¹¹⁷ Mrs Law's email dated 14 October 2003 [EMB5(1)/13/162]
Prof Li, Day 33/132:15-22; 34/138:5-8 [518]

¹¹⁸ Dr Leung, Day 26/153:8-154:24 [519]

¹¹⁹ Dr Leung, Day 26/155:17-156:16 [520]

¹²⁰ Prof Li, Day 33/134:17-135:10 [521]

¹²¹ CUHK Integration Task Force Report, §§6.5-6.7 (Merger with a less established institution) [EMB14/1271]

¹²² Prof Li, Day 33/71:23-73:4; 140:20-23; 141:19-22 [522]

¹²³ Prof Li, Day 33/42:24-25; 76:23-78:15 [523]

¹²⁴ Prof Li, Day 33/78:14-15; 100:4-7 [524]

integration of CUHK and HKUST (which were more compatible partners than CUHK and HKIEd ever are) and brought into sharp focus the following points about the “Merger Model”:

- (1) Universities are famously attached to the organization status quo. The “*resistance reflex*” can become very powerful in institutional integration in any of its forms, but most particularly with a full merger¹²⁵. Even with strong shared aspirations between compatible partners, and scope for major leveraged gains, groups hostile to the idea of merger are usually active and success requires counter balancing by active champions of the merger within the institutions and government, and through strong leadership¹²⁶.
- (2) The process of merger often carries many impediments and challenges which must be faced and worked through¹²⁷.
- (3) On the other hand, the advantages expected of a merger are realistically set to a mid-term agenda of 5-10 years¹²⁸.
- (4) Indeed, gains are not at all guaranteed in all circumstances even in mergers between compatible partners with shared aspirations¹²⁹.
- (5) That is to say, while there are significant potential benefits in the right circumstances, there are also profound risks if the integration is poorly conceived or implemented¹³⁰.
- (6) Integration between institutions usually involves a long process of discussions as well as implementation. There may also be progression within that process. Other forms of institutional integration (which bring the advantages of a merger in varying degree) often serve as stepping stones to

¹²⁵ Niland Report, §2.14 [EMB5(1)/17/258]

¹²⁶ Ibid, §4.12, Recommendation 3(c) [EMB5(1)/17/284]

¹²⁷ Ibid, §§2.15-2.16 [EMB5(1)/17/258-259]

¹²⁸ Ibid, §2.16 [EMB5(1)/17/258-259]

¹²⁹ Ibid, §4.12, Recommendation 3(b) [EMB5(1)/17/284]

¹³⁰ Ibid, §2.21 [EMB5(1)/17/260]

full merger, if the overall conditions are favourable. One pattern often seen is for the integration process to start out at the loose end of federation and progress in a planned (or even unplanned) manner toward the tight end, and then on to merger¹³¹.

13. Having been so informed by the Niland Report about the “Merger Model” and the viable alternatives thereto, Prof Li would have to be a most unreasonable, irrational and reckless minister of education to turn to force a full merger on HKIED and CUHK (who are or are seen to be not as compatible as CUHK and HKUST). As said earlier, Prof Li accepted the Niland Report.
14. Third,
 - (1) The decision whether to merge or not is that of the HKIED Council.
 - (2) Prof Li knows that the HKIED Council has ruled out a full merger in June 2004 after it has been similarly informed by the Niland Report of the difficulties and drawbacks associated with the “Merger Model” and of the array of other possibilities for institutional integration¹³².
 - (3) He would also know that a full merger is not a move that the Council Chairman and/or the President of HKIED can bring about by simply announcing it.
 - (4) Other than Prof Morris and his associates, no members of the HKIED Council have mentioned any attempts by the Government to influence them into revoking the previous Council decision of no merger.
 - (5) Indeed, all the external Council members (i.e. Dr Cheung Kwok Wah, Mr Ma Siu Leung, Mr Cheung Pak Hong, Mr Pang Yiu Kai, Mr Ng Hak Kim Eddie, Mr Cheng Man Yiu,

¹³¹ Ibid, §2.24, §2.27, §4.12, Recommendation 3(e) [EMB5(1)/17/261 & 284]

¹³² Prof Li, Day 33/101:6-21; Day 35/139:12-14 [525]

Mr Chan Wing Kwong, Prof Leslie Lo, Miss Bella SY Lo, Mr Lee Chien, Ms Ada Wong, Mr Tai Hay Lap and Miss Catherine Yen) confirm to the Commission that they did not receive any communication from any EMB officials (including Prof Li and Mrs Law) on the question of merger of the HKIED at any time between January 2006 and February 2007¹³³.

15. Fourth,

- (1) It takes two to tango.
- (2) The only potential partner for institutional integration identified by or for HKIED so far is CUHK.
- (3) CUHK is however not keen on HKIED, to Prof Li's knowledge¹³⁴. From CUHK's point of view, they participated to help the HKIED. They do not have to do it. They need not hurry¹³⁵.
- (4) Nevertheless, as far as CUHK is concerned, there has not been any pressure from any quarter for the Deep Collaboration Agreement to be taken further after it was signed¹³⁶. Prof Lau did not have any discussion with anyone from EMB on merger¹³⁷.
- (5) If Prof Li were really going for a full merger of HKIED and CUHK, it would be non-sensical for him to work just on HKIED, and not CUHK at all.

16. Last but not least,

¹³³ List of Voting Council members [IE24/86-87]
Council members' Witness Statements [W1/271-278, 299-302, 306-311; W2/5, 22-24, 31, 78-79]

¹³⁴ CUHK Integration Report, §6.7[EMB14/1271]; Prof Li, Day 33/71:23-73:4 [526]

¹³⁵ Prof Lau, Day 24/58:6-10; 58:19-21;
Prof Young, Day 24/97:3-11 [527]

¹³⁶ Prof Lau, Day 24/20:2-15 [528]

¹³⁷ Prof Lau, Day 24/49:19-21 [529]

- (1) Prof Li's wish for HKIEd to integrate with other institutions is motivated by an expectation of certain benefits accruing to the HKIEd, e.g. improvement in quality of student intake, boarder range of programmes, opportunities for postgraduate research programmes, more diverse student body, critical mass, etc¹³⁸.
- (2) It is not suggested that other integration models, in particular, the "Federation Model", would not bring the same sort of advantages to HKIEd.
- (3) There is no rational reasons why a minister for education in the position of Prof Li would want nothing short of a full merger¹³⁹. And none has been put forward.

17. In this regard,

- (1) The Deep Collaboration Agreement between CUHK and HKIEd explicitly **rules out a full merger** for at least 2 triennia (2005/08 and 2008/11)¹⁴⁰.
- (2) Contrary to what is alleged by Prof Morris¹⁴¹, Prof Li did not ask for the addition of the "M" word (as in "full merger"). Rather, it is both Dr Lam and Mr Stone's evidence that Prof Li was "**content**" for the agreement to proceed and for UGC to give it their backing¹⁴². Asking "what will all this eventually lead to? Could they be more specific?" did not mean that Prof Li was not satisfied with this step forward. Given that the Deep Collaboration Agreement is couched in the terms of an agreement to agree, if the parties could, it was a perfectly reasonable query. Prof Li explains his viewpoint:

¹³⁸ Prof Li, Day 33/62:2-17; 63:1-18; 63:25-69:4 [530]

¹³⁹ Prof Li, Day 33/81:19-82:20 [531]

¹⁴⁰ Clause 9 [ML-A2/45/426]

¹⁴¹ Prof Morris, Day 9/93:13-94:23 [532]

¹⁴² Mr Stone's Statement, §6 [W1/26/219]; Mr Stone, Day 21/8:11-9:11
 Dr Lam's Statement, §7 [W1/27/225]; Dr Lam, Day 22/125:23-127:19
 Prof Li, Day 33/203:3-20 [533]

*“Yes, I would have been amenable to a federal model, I would have been amenable to a deep collaboration, if they’re purposeful programmes, progressing one after another, I would have been very happy, provided there was progress in working together.”*¹⁴³

- (3) In support, the objective documentary evidence shows that:
- (A) Mr Stone consulted Prof Li only on Clause 11 of the agreement by suggesting the insertion of the reference to milestones (a different “M” word). This was agreed to by Prof Li¹⁴⁴.
 - (B) Mr Stone’s comments on and suggested amendments to the draft agreement, after consulting Prof Li, did not refer to Clause 9 (the “other than a full merger” clause) at all¹⁴⁵.

18. The Commission would recall Prof Li’s evidence¹⁴⁶ that he would be “*over the moon*” if he were presented with the paper¹⁴⁷ presented by Prof Luk and Prof Louisa Lam to Prof Young at their meeting on 20 October 2006¹⁴⁸. There is no reason whatsoever to doubt Prof Li’s testimony given that this proposal advocated immediate movement towards integration which would culminate in a “*full federal integration*”. Although the relationship between CUHK and HKIEd would be that of a tight federation, the CUHK Faculty of Education and HKIEd would become “*fully merged*” and all teacher education programmes would become “*single-badged CUHK-HKIEd*” programmes. In practical terms, this arrangement is a full merger.

¹⁴³ Day 35/24:11-15 [534]

¹⁴⁴ EMB & UGC’s respective file copies of Mr Stone’s email to Prof Li on 21 June 2005 [EMB5(2)/22/325 & E2/32/159]

¹⁴⁵ Mr Stone’s letter dated 21 June 2005 to Dr Lam [E2/32/158-1 to 158-4]

¹⁴⁶ Prof Li, Day 34/41:17-42:7 [535]

¹⁴⁷ [E3/9/180-183]

¹⁴⁸ Prof Lam’s Supplemental Statement, §6 [W2/27/89]

CHAPTER 17

INSTANCES WHERE PROF LI ALLEGEDLY EXERTED PRESSURE FOR A FULL MERGER

Identifying the relevant instances

1. Prof Morris, Prof Luk and their associates have given evidence, both in witness statements and live, on numerous telephone conversations, breakfasts, lunches, drinks, dinners and meetings which they rely on as showing that Prof Li has an agenda for a full merger of HKIED with CUHK.
2. We shall deal with only those occasions in respect of which a positive case has been put to Prof Li in cross-examination. In this regard, it is trite to say that witnesses should be challenged with the other side's case and this involves putting the case positively. A failure to put a point should usually disentitle the point to be taken against a party/witness in closing submissions. In support, see, for example, *EPI Inc v Symphony plc* [2005]1 WLR 3456, *per* Peter Smith J at 3471.
3. The occasions are:

| | Date | Occasion | Persons involved other than Prof Li |
|---|------------------|--|---|
| 1 | 26 June 2002 | Dinner at Sha Tin Jockey Club | Prof Morris |
| 2 | 19 July 2002 | Lunch at the offices of Messrs. Johnson, Stokes & Master | Dr Simon Ip, Mr Alfred Chan (Deputy Council Chairman) & Mr Anthony Wu (Council Treasurer) |
| 3 | 23 February 2004 | Meeting at Prof Li's office | Dr Leung, Mr Wu, Prof Morris, Prof Luk |
| 4 | August 2005 | Telephone call from Prof Li | Dr Leung |
| 5 | 29 March 2006 | Drinks at Hong Kong Club | Dr Leung, Mr Pang & Prof Morris |

| | | | |
|---|------------------|-----------------------------|--|
| 6 | 17 April 2006 | Dinner at Hong Kong Club | Dr Lam, Mr Stone, Prof Lau, Prof Young, Dr Leung & Prof Morris |
| 7 | 6 June 2006 | Meeting at Prof Li's office | Dr Cheng & Dr Leung |
| 8 | 1 September 2006 | Lunch at Hong Kong Club | Dr Cheng & Dr Leung |

4. For the other incidents mentioned by Prof Morris, Prof Luk and their associates, Prof Li's version of events must be taken to be accepted/not challenged.

Excluding incidents not involving Prof Li

5. We have not overlooked the attempts made by Prof Morris, Prof Luk and their associates throughout the course of this Inquiry to attribute Dr Leung's words and deeds on various occasions to Prof Li. They contend that Dr Leung was renewed as Council Chairman to be Prof Li's agent to translate deep collaboration with CUHK into a full merger and that Dr Leung used the non re-appointment of Prof Morris as the stick.
6. Dr Leung denies the accusation¹⁴⁹. So does Prof Li¹⁵⁰.
7. In further response, first, the evidence does not suggest any or any credible reason why Dr Leung should or would act for Prof Li.
8. Second, this allegation completely ignores the fact that Dr Leung is perfectly capable of forming his own opinion about the way forward for HKIED and that what Dr Leung does and says in that regard is what he himself truly believes in:
- (1) Dr Leung has served on the Council of HKIED since its inception in 1994¹⁵¹.
 - (2) Dr Simon Ip (who have known and worked with Dr Leung

¹⁴⁹ Day 26/130:25-132:4 [536]

¹⁵⁰ Day 34/40:25-41:4 ("Absolutely rubbish.") [537]

¹⁵¹ Dr Leung's Supplemental Statement, §18(ii) [W1/28/242]

on the HKIEd Council since that time) agrees that Dr Leung was his logical successor¹⁵².

- (3) Dr Ip considers Dr Leung to be extremely conscientious and would not have any qualms about Dr Leung as a person, in terms of the duty as Council Chairman, to serve in the best interests of HKIEd¹⁵³.
- (4) Dr Leung was on the Sutherland Steering Committee¹⁵⁴ and is well-versed in the discussions about the future direction of tertiary education, the emphasis on cost-effectiveness and value for money and the introduction of funding partly based on performance¹⁵⁵.

9. Mr Pang (who as Council Treasurer would work closely with Dr Leung) has this impression of Dr Leung:

“Q. What I want to ask you, Mr Pang, is whether you perceived during the occasions you had with the SEM or when you were talking to the chairman, whether you perceived that the chairman was under pressure to do something to change the status quo. I don’t suggest for the purpose of this question that there’s improper pressure, all right? Whether you perceived that there was pressure on the chairman to get something done in terms of changing the status quo?”

A. I think it’s more like the chairman wanted to get something done to change the status quo. The chairman was amongst the earliest members of the council, I mean very long time ago, well before me. I think he did have a lot of passion for the Institute and he also saw the problems it was facing and he wanted to do something about it as chairman. Obviously taking into the background all these other factors that

¹⁵² Dr Ip, Day 16/90:3-6 [538]

¹⁵³ Dr Ip, Day 16/90:7-10 [539]

¹⁵⁴ Sutherland Report, Appendix A [EMB5(1)/1/58]

¹⁵⁵ Dr Leung, Day 27/100/5-18 [540]

are going on."¹⁵⁶

10. If we may also respectfully quote the Chairman:

*"And that was the sole basis that you allege that he was acting as an agent for Prof Li? I mean, the other matters are quite innocuous, I thought. You are entitled to your view, he is entitled to his view, however strong this view may be and it could well be his opinion that the best way forward for the Institute is to have a merger just like you think it is not the proper way to deal with it."*¹⁵⁷

11. Third, Dr Leung could not have pushed for a full merger of HKIED and CUHK at all, certainly not for Prof Li. His stance, as documented, is consistently and expressly against a full merger¹⁵⁸. That he adopts such position is put beyond doubt by

(1) his opening speech at the 1st Council retreat on 24 April 2004. Dr Leung's words were jotted down by Ms Connie Wong of the Council Secretariat¹⁵⁹. Dr Leung linked up Ms Wong's notes seamlessly and made perfect sense of them in his live evidence¹⁶⁰. In particular, we would like to remind the Commission of the part where Dr Leung, with reference to a transparency showing the 5 Niland integration models from the status quo to merger, said,

*"- extremes are not good for us
- there is a lot of room in the middle
- we have our own identity, distinctive mission*

¹⁵⁶ Day 25/115:9-25 [541]

¹⁵⁷ Day 11/9:23-10:5 [542]

¹⁵⁸ Minutes of HKIED Council Meeting on 18 May 2005, §§5(g) & (h) [IEEM2/49]; Memorandum dated 9 June 2005 from Dr Leung to Council members [IEEM2/63]; Minutes of HKIED Council Meeting on 24 November 2005, §13(i) [IEEM2/75]; Emails dated 4 and 6 November 2006 to colleagues and students [IE3/306 & 309]; Press release dated 9 November 2006 [IE3/322]; Minutes of HKIED Council Meeting on 1 December 2006, §§6(2)-(4); 14(15), (16) & (64) [IEEM2/115-116; 119-120 & 127]; Intranet message dated 1 December 2006 [IE3/376-377]; Forum on 7 December 2006 [IE3/383]; Minutes of HKIED Council Meeting on 25 January 2007, §5(23) [IEEM2/285]

¹⁵⁹ [IE26/88-95]

¹⁶⁰ Day 26/12:7-30:14 [543]

- *we should not loose (sic) what we are*
- *we are not protect a dying institutions*
- *not one of the 5 models fits what is in my mind*
- *take some ingredients”*¹⁶¹

Dr Leung clearly rejected both the “Merger Model” and the “Status Quo Model”¹⁶²;

- (2) the contents of Dr Leung’s meeting with the CE on 4 August 2006 at which he faithfully advised the CE of HKIED’s bottom line of retaining a high level of autonomy and its own identity¹⁶³.
12. Last but not least, the re-appointment or otherwise of Prof Morris as President was simply not in Dr Leung’s hands. As Council Chairman, he has only 1 vote. All other voting members confirm to the Commission that Dr Leung did not try to influence their decisions as to whether to re-appoint Prof Morris or not with his own views on the question and that they did not receive any communication from either Dr Leung or any EMB official (including Prof Li and Mrs Law) in which the question of re-appointment of Prof Morris was linked to the question of merger of HKIED¹⁶⁴. Prof Morris also clarifies that he is not making any allegation against any of the Council members¹⁶⁵.

The picture does not fit

- 13 Turning back to the above list of 8 incidents as a whole, we invite the Commission to note that the 2nd, 3rd, 5th and 7th occasions were all initiated by HKIED. Prof Li was either invited or asked to meet. Also, although Prof Li hosted the dinner on 17 April 2006 at the Hong Kong Club (item 8), he did so at the instigation of the

¹⁶¹ [IE26/90]

¹⁶² Dr Leung, Day 26/15:6-16:2 [544]

¹⁶³ CE Office notes of meeting dated 10 August 2006, §4 [EMB5(2)/41/452]

¹⁶⁴ Voting Council members’ Witness Statements [W1/271-278, 299-302, 306-311; W2/5, 22-24, 31, 78-79]

¹⁶⁵ Day 11/13:25-14:9 [545]

Council officers and President of HKIED¹⁶⁶.

14. If Prof Morris is right, then we would have Prof Li sitting back and waiting for the HKIED personnel to give him the occasions and opportunities to press HKIED to enter into a full merger with CUHK. This is a curiously lay back approach for a minister of education who is said to be in proactive pursuit of an agenda for merger.
15. The picture does not fit and is, therefore, more **improbable** than not.

Elimination of instances in respect of there is no reliable adverse evidence

16. Furthermore, these encounters and the exchanges thereat are highly contentious. Yet, in many instances, the evidence comes in the form of, not just hearsay, but double, even multiple, hearsay.
17. The most extreme situation is Ms Katherine Ma's testimony of Prof Morris' briefing to her of words allegedly said by Prof Li which Prof Morris himself has not touched upon at all, whether in his witness statement or in live evidence.
18. Ms Ma purports to support her evidence with very abbreviated and disjointed notes that she says she took at the times of Prof Morris' briefings to her. They are:
 - (1) Dr Leung allegedly telling Prof Morris about his telephone conversation with Prof Li in August 2005 after the signing of the Deep Collaboration Agreement with CUHK in respect of which Ms Ma made these notes¹⁶⁷:

“– *Want change of governance*
- *(merger)*

¹⁶⁶ Dr Leung, Day 26/45:23-46:10; Prof Li, Day 34/6:14-16 [546]
¹⁶⁷ [E2/364]

- *or to squeeze HKIEd*"

- (2) Prof Li allegedly telling Prof Morris at the drinks at the Hong Kong Club on 29 March 2006 (at which Dr Leung, Mr Pang and Prof Morris were also present) in respect of which Ms Ma made these notes¹⁶⁸:

"# *HKIEd case was discussed at ExCo earlier on*
CE was dismissive/critical of HKIEd
CE options
1. *merger*
2. *post grad sch only*
3. *close down*"

- (3) Prof Li allegedly saying to Prof Morris on an unidentified occasion and Prof Morris purportedly briefing Ms Ma on 8 May 2006 which resulted in her making these notes¹⁶⁹:

"» *SEM said CE wanted w merger*
» *"CE want us postgrad institute"*

- (4) Prof Li allegedly telling Dr Edgar Cheng, Council Chairman of CUHK, and Dr Leung (presumably at their meeting on 6 June 2006) and Dr Leung allegedly briefing Prof Morris who then, on 10 June 2006, briefed Ms Ma who then made these notes¹⁷⁰:

"» *Death by a thousand cut*
» *Early childhood - cut out HKIEd*

SEM -

» *P to tell staff - merger*
» *Do it - I stand beside you*
No - I step down next April"

¹⁶⁸ [E2/367]

¹⁶⁹ [E2/368]

¹⁷⁰ [E2/370]

- (5) Prof Li allegedly telling Dr Leung on an unidentified occasion and Dr Leung allegedly briefing Prof Morris who then, on 20 June 2006, briefed Ms Ma who then made these notes¹⁷¹:

“SEM said the task is in line of (with) CE. If you don’t believe it, you can call CE’s office (bluff)”

- (6) Prof Li allegedly telling Dr Cheng and Dr Leung (presumably at their lunch on 1 September 2006) and Dr Leung allegedly briefing Prof Morris who then, on 20 September 2006, briefed Ms Ma who then made these notes¹⁷²:

«» *Merger - in the form of take over*
» *Not just SEM, the Govt is in favour of this model*
» *Will not push this*
» *Until after March 07 (Election CE)”*

19. These notes are not self-explanatory. They are subject to interpretation. They require context. Even Ms Ma herself either admits that she no longer has any recollection beyond what appears in her notes¹⁷³ or is able to repeat just what is stated in the notes even when she claims she retains a good recall¹⁷⁴.
20. These notes were put to Dr Leung who refutes what is attributed therein to have been said by Prof Li:

- (1) Note at [E2/364]¹⁷⁵
(2) Note at [E2/367]¹⁷⁶
(3) Note at [E2/368]¹⁷⁷
(4) Note at [E2/370]¹⁷⁸

¹⁷¹ [E2/371]

¹⁷² [E2/376]

¹⁷³ Ms Ma, Day 18/105:18-106:1; 110:3-19; 111:15-112:12 [547]

¹⁷⁴ Ms Ma, Day 18/114:15-115:10; 116:14-117:13; 124:3-16 [548]

¹⁷⁵ Dr Leung, Day 25/123:1-124:23 [549]

¹⁷⁶ Dr Leung, Day 26/46:11-47:12 [550]

¹⁷⁷ Dr Leung, Day 27/120:20-123:7 [551]

- (5) Note at [E2/376]¹⁷⁹
21. They were also put to Prof Li who likewise refutes what is attributed therein to have been said by him:
- (1) Note at [E2/364]¹⁸⁰
 - (2) Note at [E2/367]¹⁸¹
 - (3) Note at [E2/368]¹⁸²
 - (4) Note at [E2/370]¹⁸³
 - (5) Note at [E2/376]¹⁸⁴
22. Mr Pang who was present on the occasions to which the notes at [E2/367, 371 & 376] relate also refutes them¹⁸⁵.
23. There is no direct contradictory evidence before the Commission as to what was actually said by Prof Li and/or Dr Leung on each of the occasions covered by Ms Ma's said notes.
24. The Commission cannot tell
- (1) whether what Prof Morris told Ms Ma was what was actually said by Prof Li and/or Dr Leung or what Prof Morris interpreted to have been said by them; and
 - (2) if the latter, whether Prof Morris' interpretations are correct, fair or proper.

Prof Morris does not hesitate to jump to conclusions, certainly where EMB and its senior officials are involved.

25. We submit that Ms Ma's said notes should not be given any weight

¹⁷⁸ Dr Leung, Day 27/137:9-139:3 [552]
¹⁷⁹ Dr Leung, Day 26/68:18-69:24; Day 27/143:24-144:25 [553]
¹⁸⁰ Prof Li, Day 35/20:12-22:16 [554]
¹⁸¹ Prof Li, Day 35/24:23-25:4; 36:19-38:14 [555]
¹⁸² Prof Li, Day 35/63:2-6 [556]
¹⁸³ Prof Li, Day 35/77:19-78:18 [557]
¹⁸⁴ Prof Li, Day 35/90:22-91:3 [558]
¹⁸⁵ Mr Pang's 2nd Statement, §4 [W2/86] ([E2/367]); Mr Pang, Day 25/68:5-69:5 ([E2/367]); 72:22-73:2 ([E2/371]); 74:8-75:9 ([E2/376]) [559]

and the Commission has no basis to make any findings in terms thereof.

26. For these reasons, we need not go into the details of the telephone call made by Prof Li to Dr Leung in August 2005 (item 4), the drinks at the Hong Kong Club on 29 March 2006 (item 5), the meeting at Prof Li's office on 6 June 2006 (item 7) and the lunch at the Hong Kong Club on 1 September 2006 (item 8). We would invite the Commission to simply find that
- (1) Prof Li rang Dr Leung in August 2005 to ask about progress under the Deep Collaboration Agreement. He was not asking for anything to be done¹⁸⁶.
 - (2) The drinks on 29 March 2006¹⁸⁷ was organized by Dr Leung, Mr Pang and Prof Morris for them to inform Prof Li that HKIEd was ready to enter discussion along the line of the "Federation Model" and to involve Prof Li as a facilitator in the negotiation with CUHK. Prof Li was observed by Dr Leung to be "*pleasantly surprised*" and "*enthusiastic*"¹⁸⁸. In Prof Li's own words, he knew that they already signed a deep collaboration agreement and he was quite happy that they were prepared to discuss the structure of this deep collaboration.
 - (3) The meeting on 6 June 2006 was requested jointly by Dr Cheng and Dr Leung for them to inform Prof Li that they could not take the matter forward in terms of a federal structure, but they would continue to explore deep collaboration. Prof Li was observed by Dr Cheng to have said very little¹⁸⁹.
 - (4) Prof Li had lunch with Dr Cheng and Dr Leung on 1 September 2006 to enquire how the deep collaboration

¹⁸⁶ Dr Leung, Day 25/123:16-124:23 [560]

¹⁸⁷ Dr Leung, Day 26/43:16-46:10 [561]

¹⁸⁸ Dr Leung, Day 26/43:16-46:10; Prof Li, Day 33/216:23-220:4 [562]

¹⁸⁹ Dr Leung, Day 26/54:23-55:13; Dr Cheng's Statement, §3(b) [W2/227-228]; Dr Cheng's 2nd Statement, §§3-6 [W2/231-8]; Prof Li, Day 34/21:14-17; 22:8-11 [563]

between their respective institutions was going¹⁹⁰.

27. We further say that the Commission should view the remaining incidents in a manner consistent with these events, given their timing. These events show or tend to show that while Prof Li was pleased when an opportunity arose for HKIEd and CUHK to take their co-operation to the next level and facilitated them in the process, he was capable of respecting the parties' wishes when the negotiation fell through. He was content for the institutions to work on what they had. He was not pushing even the "Federation Model", not to mention full merger.

The remaining 4 incidents

The "Niland" dividing line

28. The dinner on 26 June 2002, the lunch on 19 July 2002 and the meeting on 23 February 2004 all occurred before the release of the Niland Report in March 2004.
29. It is not in dispute¹⁹¹ that before the publication of the Niland Report, the term "merger" was used loosely to cover all forms and degrees of integration between institutions. In other words, unless it was expressly made clear or the context otherwise unequivocally suggests, references to the word "merger" before March 2004 may well be a reference to any models of integration and, therefore, not necessarily suggestive of a full merger as defined in the Niland Report.
30. By way of illustration, see for example the loose use of the word "merger" in the following documents:

- (1) Minutes of HKIEd Council Meeting on 27 June 2002, §§11(g) and (h)¹⁹²;

¹⁹⁰ Dr Leung, Day 26/68:18-69:9; Prof Li, Day 34/37:14-39:2 [564]

¹⁹¹ Prof Morris' Statement, §12 [W1/12/83-84]; Prof Li's Statement, §3.18 [W1/15/174]; Mr Chan, Day 27/13:25-14:6 [565]

¹⁹² [IEEM1/64-65]

- (2) Prof Morris' email dated 8 Jun 2003 to Dr Leung, 2nd paragraph¹⁹³; and
- (3) Prof Morris' email dated 19 September 2003 to Dr Leung, penultimate paragraph¹⁹⁴.

It is to be noted that HKIED and Prof Morris used the word “merger” loosely notwithstanding that they had already had an internal report which defines the various merger terminology since November 2002¹⁹⁵.

31. Prof Li never said to anyone in HKIED that he wanted “a full merger”¹⁹⁶. It is not suggested that he ever used the term “full merger”.
32. That Prof Li meant a full merger when he said “merger” is purely a matter of inference drawn by Prof Morris and Prof Luk.
33. The basis for such inference is not explained. In particular, it is puzzling why Prof Morris himself could use the word “merger” loosely, but not Prof Li.
34. The only point put forward is that Prof Li often cited the “Chung Chi Model” which indicated that he meant a full merger¹⁹⁷. Prof Li denies that he even knows what the “Chung Chi Model” is, not to mention insisting on it¹⁹⁸.
35. It is indeed unclear what the “Chung Chi Model” is. As a matter of record, Chung Chi College, New Asia College and United College became federated to form the Chinese University in 1963. It was a voluntary arrangement. Although the subsequent defederation and

¹⁹³ [E2/274]

¹⁹⁴ [ML-A1/206]

¹⁹⁵ IBM Report on Institutional Mergers: Options for the HKIED dated 29 November 2002 (“the IBM Report”) [IE25]

¹⁹⁶ Prof Li, Day 33/101:18-21; 196:20-197:8; 200:19-21; 35/139:15-140:1 [566]

¹⁹⁷ Prof Morris, Day 9/24:6-26:25; 77:20-78:14; Prof Luk, Day 12/132:16-136:3; 137:2-7; 139:4-11; 15/45:14-15 [567]

¹⁹⁸ Prof Li, Day 33/219:6-220:16 [568]

unification was imposed by the New Chinese University Ordinance 1976, unlike the other 2 colleges, the Chung Chi board acquiesced¹⁹⁹. Therefore, if there should be a “Chung Chi Model” and it be taken as signifying a merger, it would be a voluntary and not a forced merger.

36. In fact, Prof Morris knew that Prof Li did not have in mind a full merger. In the third and second last paragraph of his email dated 19 September 2003 to Dr Leung²⁰⁰,

*“In the final analysis, it may be necessary to speak to Arthur who might intervene if he understood that the current tactic being used by EMB will not help to facilitate **the merger he desires**. I was going to write to him along these lines, but will not do so now. I am also worried that, despite many assurances to the contrary, EMB may continue to act in ways which are designed to make the Institutional Review unsuccessful. I think they need to understand that a successful IR makes integration more likely.*

Finally, I agree with your view that strategically we should take the initiative now as to wait could result in us being in a very weak bargaining position. We should however not give the initial impression that we have decided to merge and wish to negotiate the terms. I think we should take the line that - we believe that if certain conditions were satisfied, a merger could be beneficial and help the HKIED to better achieve its mission. Accordingly, the key task is to establish those conditions.”

37. There he was, referring the “merger” that Prof Li desired and mapping out a strategy to use it to secure the right terms and other advantages for HKIED. He would not have done so unless he felt that the “merger” that Prof Li desired was something that HKIED could give subject to certain conditions.

¹⁹⁹ CUHK Integration Report, Appendix C, §§54-68 [EMB14/1292-1294]
²⁰⁰ [ML-A1/206]

38. On these premises, in respect of the 3 pre-Niland incidents, we make as a general point that when Prof Li used the word “merger”, he did so not in the Niland sense and was not insisting a full merger. And this should be the end of this matter.
39. Further, it is Prof Li’s evidence that he continued to use the single word “merger” as a convenient shorthand to denote the very many possible forms of institutional integration. He would say “full merger” when he means “full merger”²⁰¹.
40. Prof Li’s evidence is corroborated by that of Dr Leung:

“Q. That may be so, but what I’m trying to find out from you is whether you at least tried to understand from Prof Morris what was his difficulty, why did he get fixed in his mind that the SEM only wanted a full merger and nothing less?”

A. You see, throughout the years, Prof Li actually uses the word “merger” here and there and sometimes when we talk about collaboration, he would use “collaboration”. When we talk about federation, he would say “federation”. So he’s not very careful in terms of the word he used and you have to try to understand the context of what he says, so that word “merger” comes up from time to time and so I think that’s part of the problem, because whenever it comes up, then it kind of deepens that suspicion and that lack of trust, you know.

So if Prof Li had been a very keen reader of the Niland report and used the words very carefully, in every conversation, that might have helped. But I think genuinely there was that word, the “M” word, you know, being mentioned by different people at different times, that could have led to a lot of misunderstanding of different events and discussions,

²⁰¹ Prof Li, Day 33/99:7-100:3 [569]

you know.”²⁰²

41. If we may also respectfully draw from the exchange between the Commission, Counsel for the Commission and Dr Leung that follows:

“Q. I would imagine that until we have this Commission and during the course of the Commission, we choose our words very carefully because of the issues involved, but before the Commission, people do tend to use the word rather loosely, because it’s a means of communication –

A. That’s right.

Q. – unless one really asks the question, “What do you actually mean by merger?” people will just go on with the discussion.

THE CHAIRMAN: There’s only one word to use in Chinese.

A. That’s right.

THE CHAIRMAN: In the course of discussion.

A. In Chinese, it’s even just one word.

MR YU: Yes.”²⁰³

42. And Prof Li is apparently not the only person who carries on loose usage of merger terminology after the Niland Report. Please see the following documents emanating from Prof Morris and Prof Luk after February 2004 in which the words “merging” and “merger” were used but obviously in a liberal sense to connote integration to an extent less than a full merger:

- (1) Email dated 3 March 2004 from Prof Morris to Dr Leung, penultimate paragraph²⁰⁴; and
- (2) Prof Luk’s note dated March 2004, §5²⁰⁵.

43. In light of the aforesaid, in respect of the dinner on 17 April 2006,

²⁰² Dr Leung, Day 32/123:17-124:13 [570]

²⁰³ Day 32/124:14-125:2 [571]

²⁰⁴ [E2/348]

²⁰⁵ [IE24/85]

the only post-Niland “merger” incident, we contend that the word “merger” should continue to be interpreted loosely, unless the context otherwise unequivocally suggests.

44. On these notes, we turn to analyze the relative probabilities of the competing accounts of the remaining 4 “merger” incidents. In doing so, we propose to address only those aspects of these events that found the propositions put to Prof Li.

The 26 June 2002 dinner

45. This can be dealt with very shortly.
46. Prof Li **did not** make and **could not have** made an “offer” to Prof Morris to put the other 3 TEIs under HKIEd and give him the job of heading the merged unitary teacher education centre (or eventually the position of Pro-Vice-Chancellor of CUHK which Prof Morris himself did not mention in evidence).
47. The simple reason is that Prof Li (even as SEM) could not possibly have made good either of these offers.
- (1) HKIEd had not then attained even self-accreditation status.
 - (2) As Prof Li says, “within the tertiary institutions, there is bias or prejudice or unfairness, but certainly the general impression then as probably still now, is that the IEd are not one of us.”²⁰⁶
 - (3) It is beyond imagination that HKU, CUHK and BU could be made to hand over their teacher education faculties/departments to HKIEd.
48. The only offer Prof Li made to Prof Morris was to speak to his Council on merger (in a loose sense) and “*if there’s any stick from your council, they will get at me rather than you*”²⁰⁷.

²⁰⁶ Prof Li, Day 34/122:14-17 [572]

²⁰⁷ Prof Li, Day 34/109:5-16 [573]

The 19 July 2002 lunch

49. To put this lunch in context, its background is that on 27 June 2002, at their 32nd meeting²⁰⁸, the HKIED Council
- (1) considered a revised paper entitled “*The Question of a Merger of the HKIED with a Comprehensive University: An Initial Response*”;
 - (2) discussed the way forward;
 - (3) agreed that the Chairman should contact the new SEM for an exchange of views and that, if necessary, a special Council meeting might be scheduled for members to discuss the issue more thoroughly.
50. Prof Li was invited by the Council officers of the HKIED and attended as a guest. And the intended topic for discussion was “merger”. It is not as if Prof Li sought the opportunity. It was the other way round.
51. Although Dr Ip got the impression that “merger” as spoken of by Prof Li meant full merger, he confirmed that Prof Li did not expressly say what type of merger it was going to be²⁰⁹. It is Prof Li’s evidence that he would have been using the word “merger” very loosely.²¹⁰
52. Two other Council officers, Mr Chan and Mr Anthony Wu, Treasurer, were also present. The conversation was conducted in their hearing²¹¹. It is noteworthy that
- (1) Mr Chan revises §3 of his Statement²¹² to the replace the references to “merger”/“mergers” to “deeper co-operation including the possibility of a merger”/“collaborations”. He

²⁰⁸ Minutes, §§11(e), (g)-(i) & Appendix 1 [IEEM1/64-65; 67-70]

²⁰⁹ Dr Ip, Day 16/126:4-8 [574]

²¹⁰ Prof Li, Day 34/130:6-12 [575]

²¹¹ Dr Ip, Day 16/68:19-69:3 [576]

²¹² Mr Chan’s 2nd Statement [W1/305-1]

says in live evidence²¹³:

“Q. Were the words “deep collaboration” used at that lunch?

A. That had been, must have been used, yes, because I do not have a full collection. There was federation (unclear), deeper collaboration, merge, full merge, all these words had been used and used at that time as well.”

This sort of integration vocabulary was used even before the Niland Report²¹⁴.

- (2) Mr Wu remembers that they did discuss in very broad terms how to attract better students to the HKIED. His general impression of Prof Li is that he wants to improve the standard and quality of HKIED and has an open mind as to how the Institute achieves this²¹⁵.
53. The second issue about this lunch that is material to this Inquiry is how strongly and forcefully Prof Li delivered the message that CUHK and HKIED should merge (whatever the form may be), i.e. whether he put it on the basis that merger was a *fait accompli*²¹⁶ without regard to whether the 2 institutions liked it or not and, if so, whether he used the word “rape” to emphasize his point.
54. From Prof Li’s point of view, he was just being very keen to put forward the idea of merging for them to consider. He did not specify which institution they should merge with. He left it entirely up to them²¹⁷. Prof Li is adamant that he **did not** use and he **could not have** used the word “rape”²¹⁸ or “*words to the effect that if the IEd did not consent or co-operate, then it would be raped*” as alleged by Dr Ip²¹⁹ and Mr Chan²²⁰.

²¹³ Mr Chan, Day 27/11:10-14 [577]

²¹⁴ Mr Chan, Day 27,12:15-13:1; 13:14-14:6 [578]

²¹⁵ Mr Wu’s Statement, §§1 & 3 [W1/303] & 2nd Statement, §8 [W1/303-2 to 303-3]

²¹⁶ Dr Ip’s Statement, §5 [W1/17/188]

²¹⁷ Prof Li, Day 33/147:8-15 [579]

²¹⁸ Prof Li, Day 33/149:9-150:11; Day 34/129:1-8; Day 35/111:8-12 [580]

²¹⁹ Dr Ip’s Supplemental Statement, §§1-2 [W1/18/190-1]; Dr Ip, Day 16/65:12-15 [581]

55. We invite the Commission to have regard to the following:

- (1) Dr Ip had the presence of mind to prepare a note of the discussion as an aide memoire²²¹ but did not record the alleged use of the word “rape” by Prof Li when recording Prof Li’s alleged statement that merger was going to happen and it was better that the parties co-operated.
- (2) Dr Ip did not recall the remark in his 1st Statement. He did not put in his Supplemental Statement until after the evidence given by Prof Morris on the first day of the substantive hearing of this Inquiry has become widely reported.
- (3) When asked by Mr Wu, Dr Ip came up with a completely different expression²²².
- (4) Like Dr Ip, Mr Chan did not volunteer the point in either version of his Statements²²³. Where asked in evidence, he can recall the word being used but not the rest of the sentence²²⁴.
- (5) Mr Wu could not remember even after prompting. He did not hear that HKIEd must merge with another university²²⁵.
- (6) Mr Chan very fairly put it down as a matter of degree of impression and difference in interpretation. His own impression is that Prof Li was encouraging HKIEd and CUHK to start looking at a possible form of cooperation, including a full merger²²⁶. The Government had strong intention was that they would like to see a deeper collaboration between these 2 institutions, including a

²²⁰ Mr Chan, Day 27/8:21-9:5 [582]

²²¹ [E2/112]

²²² Mr Wu’s 2nd Statement, §6 [W1/303-2]

²²³ Mr Chan’s Statements [W1/304-305]

²²⁴ Mr Chan, Day 27/8:21-9:5 [583]

²²⁵ Mr Wu’s 2nd Statement, §§8-9 [W1/303-2 to 303-3]

²²⁶ Mr Chan, Day 27/5:19-22; [584]

merger²²⁷. He did not sense the message as being one that if HKIED did not proceed with the merger, it would be made not viable²²⁸. Rather,

“A. *It was quite casual. In a way, my interpretation that I would give was if I can describe it, it was disadvantaged. What I remember was that Prof Li was encouraging HKIED to be proactive in terms of a deeper co-operation between HKIED and CUHK and perhaps others as well. If we go a step forward, looking at the situation of HKIED at that time, because of the declining number of children to the schools, et cetera, then HKIED’s number of intake students will be reduced and so are the resources reduced.*

I think, overall it was encouraging that that may be a way out, you know, in that particular situation. The sooner the HKIED get a proactive role into the discussion of a possible allocation, then you will be able to get the better terms for the whole arrangement, otherwise you will lose out. I think that was the impression, it got disadvantaged.”²²⁹

- (7) Dr Ip’s relationship with Prof Li continued to be very cordial after this lunch²³⁰. He issued a warm invitation to Prof Li to address Council²³¹.
- (8) Dr Ip claims to be sure that he would have reported formally to the Council on the substance of the 19 July 2002 discussion as soon as practicable after the lunch²³². One would have expected him to do so if the lunch went as he

²²⁷ Mr Chan, Day 27/8:11-20 [585]

²²⁸ Mr Chan, Day 27/9:23-10:5 [586]

²²⁹ Mr Chan, Day 27/10:18-11:9 [587]

²³⁰ Dr Ip, Day 16/133:25-133:4; 134:16-17 [588]

²³¹ Dr Ip’s letter dated 3 October 2002 to Prof Li [EMB13/945]; Dr Ip, Day 16/133:22 [589]

²³² Dr Ip’s 3rd Statement, §2 [W1/190-3]

describes. The Council meeting immediately following the lunch was the one on 12 September 2002. However, Dr Ip did not report the conversation he had with Prof Li on 19 July 2002 in the terms of his evidence in this Inquiry. Instead, he is recorded to have reported that neither he nor HKIED had received any formal proposal from the Government in relation to the merger issue²³³. While this statement is technically correct, it would be misleading in the light of Dr Ip's lunch conversation with Prof Li insofar as Dr Ip had allegedly perceived Prof Li to have told him that HKIED would be merged with CUHK regardless of its wish.

- (9) Prof Li presented his views on institutional integration to the HKIED Council on 28 November 2002. What Prof Li is recorded to have said on this occasion is inconsistent with what he had allegedly said on 19 July 2002 on his intention to force a merger upon HKIED and CUHK, as allegedly perceived by Dr Ip²³⁴. This presentation was a follow-up on the lunch. Had Prof Li said the things attributed by Dr Ip to have been said by him to Council officers on 19 July 2002, one would have expected the latter to raise the matter to clear the air.

56. In deliberating this matter, the Commission should note that undue weight had been attached to the word "rape":

- (1) Prof Li had already said that he did not and could not have used the word "rape";
- (2) Dr Ip himself does not think that it was of any particular importance or relevance at the time and is best ignored²³⁵. To Dr Ip, it was just an "unfortunate choice of metaphor"²³⁶.
- (3) Mr Chan recalls the word as being taken quite casually, not

²³³ Minutes, §2 [IEEM1/75-76]

²³⁴ Minutes [IEEM1/78-80]

²³⁵ Dr Ip's Supplemental Statement, §2 [W1/18/190-1]

²³⁶ Dr Ip, Day 16/66:9-10 [590]

well-thought-through. It was not uttered in a threatening tone²³⁷. He could not understand why it was used given the message that Prof Li was trying to relay. It was out of context. So he just brushed the word aside²³⁸.

57. Further, an investigation of what was said by Prof Li at the 19 July 2002 lunch should be put in the context of his presentation to the HKIED Council on 28 November 2002 during which he used the whole range of integration terminology including “amalgamation”, “integration” and “collaboration”. There is no evidence of any change of circumstances between 19 July and 28 November 2002 to suggest that Prof Li’s position on the later date was toned down from that he took on the earlier date. In this connection, it is Mr Chan’s impression that the views expressed by Prof Li at the Council presentation aligned with that he communicated at lunch earlier²³⁹.
58. Also, any perception of a threat of being forced to merge on the part of Dr Ip was resolved by Prof Li’s presentation²⁴⁰. Indeed, if Prof Li did use the word “rape”, it would only be reasonable for Dr Ip to seek clarification of its meaning at the Council meeting. However, he did not.
59. We respectfully invite the Commission to accept Prof Li’s testimony on the 19 July 2002 lunch.

The 23 February 2004 meeting

60. Dr Leung has given a very detailed account of this meeting²⁴¹ with which Prof Li by and large agrees²⁴².
61. In summary, Dr Leung recalls that he initiated this meeting. It was

²³⁷ Mr Chan, Day 27/10:14-15 [591]

²³⁸ Mr Chan, Day 27/16:10-19; 66:17-22 [592]

²³⁹ Mr Chan, Day 27/43:24-45:21; 46:16-47:4 [593]

²⁴⁰ Dr Ip, Day 16/157:1-4 [594]

²⁴¹ Dr Leung’s Statement, §§13-18 [W1/11/57-58]

²⁴² Prof Li, Day 33/184:6 [595]

an informal exchange of views on the future development of HKIED and an attempt by HKIED to secure funding from the Government. Insofar as it is material, Prof Li discussed closer collaboration with other universities, including merger, as an option for HKIED to consider to redress the limitations in its growth potential. He professed to having an open mind about the different forms of integration but gave the message that it would be up to HKIED to pursue the matter further on its own initiative.

62. On the other hand, Prof Morris²⁴³ and Prof Luk²⁴⁴ tie this meeting to the telephone conversation Prof Morris had with Prof Li on 21 January 2004, the subject-matter of the 1st Allegation. Prof Morris claims that he asked Dr Leung to initiate this meeting because of their concerns arising from the call. They allege that Prof Li said that HKIED would not be viable if it did not merge with CUHK in the sense of being taken over by CUHK.
63. Mr Wu who was also present at this meeting cannot recall merger being discussed but rather they were asking for more resources from the Government and they talked about more collaborations and co-operations with other universities to improve student quality²⁴⁵.
64. We repeat Chapter 16 and say that in light of the matters set out therein, it is highly improbable that Prof Li would push for a full merger of CUHK and HKUST. By the time of this meeting, Prof Li had already had the recommendation of the Niland Report²⁴⁶.

The 17 April 2006 dinner

65. The question is, to put shortly, whether the dinner was about a full merger or a federation between CUHK and HKIED.

²⁴³ Prof Morris, Day 9/61:1-13; 62:24-63:2 [596]

²⁴⁴ Prof Luk's Statement, §§5.25-5.32 [W1/13/126-128]

²⁴⁵ Mr Wu's Statement, §2 [W1/303]

²⁴⁶ Letter dated 16 January 2004 from Dr Lam to Prof Li enclosing an executive summary of the Niland Report [EMB5(2)/189-190]

66. According to Prof Morris, this dinner turned out to be “*another merger discussion session*”²⁴⁷.
67. What Prof Morris says makes no sense whatsoever. As said earlier, on 29 March 2006, Dr Leung, Mr Pang and Prof Morris invited Prof Li to drinks at the Hong Kong Club to inform him that HKIE was ready to enter discussion with CUHK along the line of the “Federation Model” and to involve him as a facilitator in the negotiation with CUHK. The dinner on 17 April 2006 was hosted by Prof Li at the invitation of Dr Leung²⁴⁸. Dr Leung says this,
- “... the dinner was initiated through 2 meetings before by us. Prof Morris and I went into this dinner with a very clear idea that we would be talking about the federation model, specifically the Columbia model”*²⁴⁹
68. Except for Prof Morris, all other 6 attendees (including Prof Li) consistently describe²⁵⁰ the discussion as follows:
- (1) that it was not about merger. Prof Young very graphically says that, with council decisions on both sides ruling out merger, he would have bolted out of his chair and others might have hit the roof if merger was discussed²⁵¹;
 - (2) that the discussion was about the various ways in which the 2 institutions could work together;
 - (3) that the federal model, in particular, the Columbia Model

²⁴⁷ Prof Morris, Day 5/132:25-133:3 [597]

²⁴⁸ Dr Leung, Day 26/45:23-46:10; Prof Li, Day 34/6:14-16 [598]

²⁴⁹ Dr Leung, Day 27/128:13-16 [599]

²⁵⁰ Mr Stone, Day 21/10:20-22; 11:9-11; 31:1-5; 31:12-20; Day 22/7:6-11; 7:24-8:6; 92:2-6
Dr Lam, Day 22/114:25-115:5; 115:11-14; 116:14-117:5; 118:11-17; 153:9-18; 154:8-18;
154:23-24; 155:16-20

Prof Lau’s Statement, §4 [W1/21/206]; Prof Lau, Day 24/3:14-17; 14:4-15:5

Prof Young’s Statement, §4 [W1/22/210]; Prof Young, Day 24/145:25-149:24; 151:24-152:9;
153:1-13; 161:3-5; 164:15-17

Dr Leung’s Statement, §§58-60 [W1/11/69-70]; Dr Leung, Day 26/48:23-53:17; Day
27/128:18-129:24

Prof Li, Day 24/4:15-5:15; 6:17-8:9; 9:15-10:10; 18:9-16; Day 35/39:7-40:10; 41:4-20 [600]

²⁵¹ Prof Young, Day 24/86:21-25; 164:4-10 [601]

which was recommended by Prof Morris, and various facets of a federal arrangement such as recruitment of the head of HKIED, whether there should be 2 councils, ring-fencing of teacher education resources, issue of certificates for graduates, research assessment exercise were raised and discussed;

- (4) that the dinner was not a negotiation as such. Issues were flagged up. Ideas were ventilated and kicked around. No decision was made or consensus reached.

69. It was put to Prof Lau that Prof Morris was keen on the federal model but that Prof Li was keen on HKIED fully merging with CUHK. Prof Lau did not agree with this proposition. He sensed that Prof Li would have supported anything, any deep collaboration effort that would be agreeable to both institutions²⁵².

70. Prof Li, Prof Lau and Prof Young were shown what purports to be a letter dated 9 October 2006 (i.e. 6 months after the event) from Prof Morris to Prof Luk and Prof Phil Moore to the effect that CUHK insisted upon the following in its future relationship with HKIED at the 17 April 2006 dinner:

- (1) It would be a merger - a federal arrangement would not be acceptable.
- (2) In the longer term, HKIED would move to the Shatin campus.
- (3) HKIED would become part of their Faculty of Education, split into two divisions, an undergraduate and a postgraduate division. The HKIED would be the former.
- (4) Many of HKIED's staff would be retitled to Teaching Fellow/Instructor grades so as to exclude them from the RAE.

71. None of them viewed the letter as an accurate description of the

²⁵² Prof Lau, Day 24/15:25-16:7 [602]

discussion on 17 April 2006²⁵³ for the following reasons:

- (1) The discussion at the dinner was tentative with no one insisting anything.
- (2) CUHK is not in favour of a merger but what is not acceptable is a loose nominal federal system, and what might be acceptable for discussion is a tighter federal system.
- (3) CUHK does not have enough space for its own activities, not to mention accommodate another institution.
- (4) There was no mention that HKIEd would become part of their Faculty of Education

72. The aforesaid evidence is consistent with the Brief to CE prepared by EMB with the assistance of the UGC. Much time has been spent on examining and comparing Mr Stone's draft²⁵⁴ and Prof Li's amendments²⁵⁵. In particular, question were asked about Prof Li's deletion of the words "or federation" and "or deep federation".

73. With respect, this document must be viewed in its proper perspective. The name "Brief" is self-explanatory; it was prepared by EMB for CE to prepare him for the meeting with Dr Leung on 4 August 2006 in the "*shortest*", "*briefest*" and "*fullest*" sense²⁵⁶. The CE cannot be expected to appreciate the subtle differences in the merger continuum²⁵⁷. Likewise, no rational criticism can be made of Prof Li for not having carefully set out each and every distinction that might have been used during serious negotiations. The use of the word "merger" in this document would essentially be intended to be loose to cover the whole range of possible arrangements for institutional integration. This is apparent from the use of the expression "some form of merger" which would

²⁵³ Prof Lau, Day 24/15:1-24; Prof Young, Day 24/108:6-112:16; Prof Li Day 34/9:10-12:18

[603]

²⁵⁴ [EMB5(2)/425]

²⁵⁵ [EMB5(2)/436-438]

²⁵⁶ Prof Li, Day 33/100:16-20 [604]

²⁵⁷ Prof Li, Day 33/100:8-20 [605]

include a federation. The additional words “or federation” and “or deep federation” were therefore entirely otiose and, for that reason, crossed out.

74. In reading this document, we invite the Commission to take note of the following as well:
- (1) It was made clear in the Brief that the 17 April 2006 dinner was arranged against the background of limited progress regarding the deep collaboration.
 - (2) The “status quo” therefore referred to the lack of development under the Deep Collaboration Agreement²⁵⁸.
75. In a subsequent correspondence²⁵⁹, Dr Lam characterised the matter explored at the 17 April 2006 dinner as the “*intensified deep collaboration between CUHK and HKIEd*”.
76. Last but not least, on 6 June 2006, Dr Cheng and Dr Leung informed Prof Li that CUHK and HKIEd could not take the discussion of a federal structure forward. This would not make sense if the parties were talking about merger and not federation at the 17 April 2006 dinner.

Conclusion

77. Prof Li has not exerted any or any undue pressure on HKIEd to merge with CUHK. He would certainly like to see HKIEd benefit from integration with other institutions, since that would also benefit Hong Kong and its education system. What he has done so far is merely to encourage HKIEd to explore prospects of institutional integration and, when called upon to do so, to facilitate HKIEd’s efforts. However, all of these efforts have been twisted and misconstrued.

²⁵⁸ Mr Stone, Day 21/33:1-3; Dr Lam, Day 22/116:6-13 [606]

²⁵⁹ Dr Lam’s letter dated 11 August 2006 to Prof Li [EMB5(2)/457]

CHAPTER 18

GOVERNMENT'S LEGITIMATE ROLE IN INSTITUTIONAL MATTERS

1. It is clear from the above that Prof Li has not exerted any or any undue pressure on HKIEd, Prof Morris or Dr Leung for HKIEd to merge with any institution.
2. This chapter is submitted solely to assist the Commission on §(b) of the Terms of Reference²⁶⁰.
3. To avoid any misunderstanding and misinterpretation, in making these submissions, we are not undermining or belittling the value of academic freedom and institutional autonomy of higher education institutions to our society. It is Prof Morris and Prof Luk who make the allegations founding this Inquiry and pitch them as instances of infringement of HKIEd's academic freedom and institutional autonomy by the Government, thereby raising the questions of principle as to whether academic freedom and institutional autonomy of publicly funded higher education institutions are without limits/constraints and, if not, where is the line to be drawn.
4. §§1.5 and 1.6 of the UGC Notes on Procedures²⁶¹ is the logical

²⁶⁰ [CB/1/1]

²⁶¹ 2001 Edition [UA/B/90] amended in the 2007 [UA/A/2] as follows:

“1.5 ... Each of the higher education institutions is an autonomous body with its own Ordinance and Governing Council. The institutions have substantial freedom in the control of curricular and academic standards, the selection of staff and students, initiation and acceptance of research, and the internal allocation of resources. Nevertheless, because the institutions are largely supported by public funds, and in view of the social, cultural and economic importance of higher education, the Government and the community at large have a legitimate interest in the operation of the institutions to ensure that they are providing the highest possible standards of education in the most cost-effective manner. The UGC seeks to maintain an appropriate balance in these matters.

1.6 The UGC seeks to promote responsible understanding between the institutions, the Government and the community at large. It mediates interests between institutions and the Administration. On the one hand, the UGC safeguards the academic

starting point in this discussion:

*“1.5 ... Each of the higher education institutions is an autonomous body with its own Ordinance and Governing Council. The institutions have substantial freedom in the control of curricular and academic standards, the selection of staff and students, initiation and acceptance of research, and the internal allocation of resources. Nevertheless, because the institutions are **largely supported by public funds**, and in view of the social, cultural and economic importance of higher education, **the Government and the community at large have a legitimate interest in the operation of the institutions to ensure that they are providing the highest possible standards of education in the most cost-effective manner.**”*

*1.6 The UGC acts as a “buffer”, safeguarding the academic freedom and institutional autonomy of the institutions on the one hand, and ensuring **value for money for the taxpayers** on the other.”*

5. §§2.9-2.11 of the Sutherland Report²⁶² elaborate:

*“2.9 At present, once the UGC recommends a triennial recurrent block grant, that money comes with very few strings attached. Institutions have wide discretion and autonomy in its use. This ensures academic freedom, and institutional autonomy that is the foundation for **responsive and efficient** institutions. Similarly, an effective system is in place for capital funding to ensure that infrastructural investments are made strategically. Having said that, there is room for*

freedom and institutional autonomy of the institutions, while on the other it ensures value for money for the taxpayers. The Committee has open channels to both the institutions and Government, since it offers advice to, and receives advice from both.”

²⁶²

[EMB5(1)/1/21-22]

greater coordination between the UGC and the Government in order to minimise duplication of efforts on the part of the latter.

2.10 *The UGC must balance a range of tensions to perform its role. Staff and institutions are funded by public money, but society expects that their academic freedom to choose what to research and teach will be **constantly balanced with the policy and economic objectives that are endorsed for the SAR.** On top of that, many academics would feel that they have a **duty and responsibility** to contribute to the society in which they live. This is a delicate and evolving balance that calls for expert peer judgment and subtle steering, not intrusive decisions by fiat. ...*

2.11 *The institutions must also provide **value for money**, and in so doing balance their institutional freedom with **public accountability.** Heads of institutions are officially accounting officers of their organisations and are obliged to sign a certificate of accountability annually for the disbursement of public money. But again, their position requires them to balance this obligation with leading and nurturing the vital characteristics of innovation, creativity and **responsiveness.**”*

6. For publicly funded institutions, academic freedom and institutional autonomy are therefore never absolute rights, but are “*negotiated*” and “*agreed*” between funders and funded institutions. The Sutherland Report analyzes them in these terms²⁶³:

“6.25 In such a context the issue of academic freedom, which even in evidence to this Review tends to be more characterised by slogan than argument, can be redefined. The slogans tend either to demand or to deny the importance of some generic absolute but

²⁶³ [EMB5(1)/1/55-56]

*unclear form of autonomy. No individual or institution anywhere in the world has such an unrestrained freedom to act without consideration for the consequences or costs. There are **only negotiated freedoms**. Such freedoms are agreed between funders, whether public or private, and funded institutions. I have argued earlier that specific forms of freedom are essential if the academic enterprise is to be successful, but that they are **not without constraint**.*

6.26 *The best research ideas are not the product of intrusive government direction. The best teaching builds upon the creative talents of lecturer and professor. Such ideas, such talents, are best fostered where autonomy is **balanced by the acceptance of responsibility**. It would be easy on the one hand to smother such creativity by intrusiveness; it would be equally easy to squander it through self-indulgence. Neither of these extremes characterises the reality of the situation in Hong Kong. However, increasingly throughout the world there is an acceptance that the freedom of enquiry and mind, which is the lifeblood of academic creativity and health, is **constrained by funding pressures**. In a mature society the necessary freedoms are **negotiated** between players who share the common goal of a strong university system. The balance is delicate, but if the best researchers and teachers are to be attracted to and remain in Hong Kong, that balance must be found and maintained.”*

7. These sentiments are echoed by

(1) Prof Lau (in answer to the Chairman’s question):

“Q. *So institutional autonomy is really not absolute in the sense that if it is in conflict with public policy and so on then institutional autonomy*

will have to give way to public interest, presumably?

A. *Certainly for publicly funded institutions, yes.*²⁶⁴

(2) Prof Young (also in answer to the Chairman's question):

*"Institutional autonomy is a privilege, and with that privilege comes a heavy responsibility, the responsibility to look at very seriously community needs, society needs and Government policy."*²⁶⁵

8. For the Commission's information,

(1) The HKIED receives recurrent fundings from the Government through UGC as follows:

| <u>Period</u> | <u>Amount</u> |
|-----------------------|---|
| 2004/05 rollover year | \$632.3 million ²⁶⁶ |
| 2005/08 triennium | \$1,462.3 million ²⁶⁷ |

(2) In addition, it received funding from EMB to the tune of **\$134.1 million** from 2002-2007 for professional development programmes, projects, research studies and consultancies commissioned by EMB²⁶⁸.

9. As we are concerned with the provision of teacher training, there is an added dimension of the Government or Government-subsidized schools being the future employers of teacher education graduates.²⁶⁹

10. In the context of merger of higher education institutions, the drivers of merger vary among different countries. In some cases

²⁶⁴ Day 24/74:17-21 [607]

²⁶⁵ Day 24/205:20-23 [608]

²⁶⁶ Allocation letter dated 5 March 2004 [U1-481]

²⁶⁷ Allocation letter dated 1 March 2005 [U4-137]

²⁶⁸ Prof Li's Statement, §3.13 [W1/15/173]

²⁶⁹ Prof Li, Day 34/24:11-20 [609]

the mergers were part of government policy. For example, mergers were forced in Australia, South Africa and the UK, as government education reform initiatives, to rationalize the higher education sector, with the intention of transforming the weaker and non-viable education institutions into stronger, comprehensive institutions to better serve the country's needs²⁷⁰.

11. Government-steered mergers can sit well with the academic freedom and institutional autonomy of institutions. In support, we draw the Commission's attention to the following passages in the Niland Report:

“§1.8 If we are to carry forward the aspirations for Hong Kong to serve as the education hub of the region, and to advance the strategic orientation of the UGC's Roadmap Document, one important area for attention will be how institutions in the highest education sector relate to, and interact with, one another. Universities, quite rightly, put great store in their autonomy, and in the eyes of some this will be seen to give protection against integration with other institutions, at least in any sense other than purely voluntary interchange. Yet there is a legitimate role for the Government and the UGC in setting the framework within which the higher education sector pursues its roles and missions. These issues, and other key aspects of the strategies for institutional integration in the Hong Kong higher education sector, form the focus of this Report.”²⁷¹

“3.4 The eight tertiary institutions are funded by the Government through the UGC. Each of the UGC-funded institutions is an autonomous body with its own Ordinance and Governing Council. The seven universities and the HKIEd have substantial freedom

²⁷⁰ IBM Report on Institutional Mergers: Options for the HKIEd dated 29 November 2002 (“the IBM Report”), page 10, 2nd paragraph [IE25/12]; Appendix A, page 5, §4 [IE25/44]

²⁷¹ [EMB5(1)/17/247]

*in the control of curricula and academic standards, the selection of staff and students and the internal allocation of resources. **Because they are largely supported by public funds, however, and in view of the importance of higher education to the future of Hong Kong, the HKSAR Government and the community at large can legitimately take an interest in the operation of the institutions, to ensure they are providing the highest possible standards of education in the most cost-effective manner.***²⁷²

*“4.1 One of the abiding challenges in developing modern policies for the higher education sector is to strike the right balance between actions that encourage, steer or direct universities in particular ways to achieve certain outcomes, and on the other side of the scale, the preservation of traditional autonomy through which universities can set and pursue their own missions under the guidance of governing councils which are independent of government. With unlimited resources, the balancing point can be set more toward autonomy. **But where public funds are static or declining (as they are in most countries) and where sources of private funds are seriously limited, public policy can be expected to take a closer interest in just how resources are allocated, and with what effect.***²⁷³

12. The forcing of a merger of higher education institutions is not without precedent in Hong Kong as CUHK is the product of such an exercise in 1976²⁷⁴.
13. Further, the introduction of financial dimensions (being the most effective) is accepted as one of the tools that a government can properly use to steer a merger. Again, the Niland Report:

²⁷² [EMB5(1)/17/267]

²⁷³ [EMB5(1)/17/280]

²⁷⁴ CUHK Integration Report, Appendix C [EMB14/1292-1294]

“2.6 While many drivers toward merger are evident in the international experience, one in particular should be highlighted - the role government plays:

*“In the case of publicly-funded colleges and universities government almost always plays a role in merger. Sometimes the government’s role is extremely proactive as when a government forces merger. Many mergers among public colleges and universities are involuntary; they are the creations of government. In other cases government may force merger but not determine who the partners should be. In other cases, government may establish strong incentives to merge. **Those incentives may be positive - financial inducements are offered - or they may be negative as when financial penalties are imposed on institutions that choose to remain independent.** Finally, a government may stimulate merger by signalling that it would approve a merger on certain terms or by indicating that an institution in financial stress will not be rescued by special government intervention.”²⁷⁵*

“4.2 The role of bodies such as the UGC, or indeed of government education departments generally, is a familiar theme in public policy discussion, and was touched on in the HER Report 2002:

“The UGC must balance a range of tensions to perform its role. Staff and institutions are funded by public money, but society expects that their academic freedom to choose what to research and teach will be constantly balanced with the policy and economic objectives that are endorsed for the SAR”. (HER Report, 2002; p. 10)

²⁷⁵

[EMB5(1)/17/256]

4.3 *This is not to suggest that university autonomy, in its role of assuring an environment for academic freedom in the traditional sense, is to be compromised. **Nor does a guiding government hand at certain stages of the resource allocation process undermine the governing council’s ultimate right and responsibility for seeing that the university pursues its set mission.** Indeed, within the coherent framework provided by a thoughtful and strategic higher education policy, the great majority of universities can hope to achieve more than if left to a public policy vacuum or where a raw laissez-faire approach operates. ...”²⁷⁶*

*“4.43 Beyond the UGC, the Government itself occupies the **central role** in high level policy development, both through its approach to funding of higher education institutions and the setting of their regulatory environment.”²⁷⁷*

14. Despite the foregoing, in the present situation with HKIEd, the Government has only tendered advice and has taken no action to impose on the Institute, or indeed any institution, any form of merger.

²⁷⁶ [EMB5(1)/17/280]

²⁷⁷ [EMB5(1)/17/293]

CHAPTER 19

FINAL CHAPTER – STANDING BACK

1. After 37 days of the inquiry, and after hearing witness after witness, and looking back at the entire evidence, one cannot help but detect a central theme which runs through the entire proceedings. That is, on the part of certain witnesses, the *most negative* interpretation is to be given to every act of Government, particularly the EMB and its senior officials. One cannot but marvel at the capacity of some to make allegations – left, right and centre – knowing that they are so easy to make but difficult to refute, and knowing also that one can make them with impunity. Prof Li is surely correct when he said: “Without any trust in the Government, without honest and open dialogue, despite many communication channels, suspicions are allowed to fester and the poison spreads”.¹
2. LPAT is a good example. In private, Prof Morris blamed his own faculty but, in the public, he accused the EMB as having caused all the damage to HKIEd when in reality those making the most criticisms were from the PTU, among others, who pointed the finger at the Teacher Education Institution to shield the serving teachers from criticisms for the poor results. But, more to the point, the HKIEd had not yet got their PR tackles in order. The EMB went so far as to give the HKIEd advance notice of the results, so they could plan their media campaign accordingly. Once that was done, the problem of bad publicity subsided and the LPAT results continues to be released in the way has been in the past.
3. When the bad times came; they came to everyone, and the Government was no exception. In 2003 alone, EMB’s internal budget was cut by \$900 million. That resulted from their own merger with the ED, one brought about by harsh economic realities. The bad times also came to the tertiary institutions. They got hard hit, so that the school sector could be spared, and along with it the school children. The institutions had reserves and matching grants. They knew the

¹ Day 37:153:15-17 [610].

cuts were coming; they planned ahead, and HKIEd was no exception. By a confluence of events, however, it was initially affected more than the others. With self-accreditation came the loss of front-end loading. Being in the education sector, it suffered from demographic changes. As a monotechnic institution, it was vulnerable to manpower planning and policy cycles. It also lacked the flexibility of a comprehensive university, where cross-subsidies between disciplines were possible, and double degrees, 2 + 2 programmes could be conducted within its four walls.

4. In the meantime, there is much to be said that, if the excellence of the institution and the continuous improvement of student intake were to be top priorities, the status quo of HKIEd was indeed not an option. Even comprehensive universities, like the CUHK, thought in moments of honest reflection that their own status quo was not an option. There had to be changes, especially during the bad times, and “radical” steps would have to be considered. Deep collaboration leading up to some form merger when circumstances permit was the way ahead as contemplated by the UGC in its “Policy Blueprint”, giving substance to the Niland Report. Added onto this were the discussions on 2 + 2, as envisaged by the Sutherland Report.
5. The cumulative effect on HKIEd of funding cuts, demographics and policy cycles was not realized, not even by the EMB, until late 2004. In LegCo, Prof Morris made a passionate plea for reprieve – an across-the-board reduction in percentage terms. At the same time, Prof Morris said, fairly, that he was not arguing that there was not a logic or rationale behind each of the cuts. Though his proposal was not acceded to, there was active support on the part of Government and Mrs Law in particular, as is evidenced from email exchanges between her and Prof Morris at the start of 2005. While thanking Mrs Law at the time for her “constructive initiatives” of encouraging project funding to HKIEd (with notable awards in December 2004, to Dr Lo Mun-ling, and early 2005, to Prof Magdalena Mok) and the increase of BEd (ECE) numbers on self-financing basis, Prof Morris now says that he merely considers himself “capable of writing very courteous and polite emails”.² This is not unlike the letter sent by the PTU to the SEM in 6.9.04, commending each responsible official by

² Day 8/43:25-44:7 [611].

- name for helping to resolve the surplus teacher problem at the time³ – now described dismissively by Cheung Man-kwong as an annual “polite letter of a formal nature”.⁴
6. Even as the events appeared to converge against the HKIEd, other factors were unfolding in its favour. Its VDS/CRS were successfully implemented in 2005. A “monotechnic premium” was applied to offset the removal of front-end loading. 30 additional FYFD places were granted for in-service ECE. Project funding of over \$60 million was awarded since December 2004. Even in the tender exercise, HKIEd won an additional 120 annual places for C(ECE). It could have got more places, if it was willing to be flexible on the price. EMB had wanted them to have 240 places. Indeed, the good intention of EMB (particularly that of the SEM and Mrs Law) shone through the discussions before and after the “Rob Peter to Pay Paul” letter. In the end, instead of the projected deficit of \$8 million for 2005/06, HKIEd actually enjoyed a healthy surplus of \$129 million. Unfortunately, what Prof Morris only talks about now, with no justifications, is how the EMB had *intended* to disadvantage the HKIEd.
 7. None of these, not even cut in student numbers, would have been cause for complaint but for the fact that he failed to get the support of the Council for reappointment as President. The senior management blamed it on the Chairman, on the procedure adopted, and even on the Council members. But that was not enough for Prof Luk, who had to come up with a conspiracy theory. That this was the inexorable outcome of one man’s quest for *full* merger, with the top management trying to appease him by exploring a *federation*. And, refusing to “lead” a *full* merger, Prof Morris lost his job.
 8. His 10,000 word letter, by the way it was disseminated, stirred up a storm in the education community, with its less than well-thought out, but highly inflammatory and defamatory allegations. It was intended to, and did, galvanize the public, and draw the attention of the media and politicians.

³ EMB 7/64/353.

⁴ Cheung Man-kwong’s statement (22.5.07) [W2/293].

9. Take the 1st Allegation. It is a play on words. “Merger – otherwise, cuts by Mrs Law”. It draws a parallel with the “death by a thousand cuts” expression of Dr Thomas Leung. By using a convenient semantic device, Prof Luk painted the SEM, Mrs Law and Dr Leung all black with the same brush. The Allegation completely broke down when even Prof Morris did not, and was not able to, support such a verbal distortion. The right sequence of words was “Cuts – something ‘radical’, including merger”. Mrs Law did *not* feature in this sophistry of “merger” talk at all.
10. The 2nd Allegation is even more outrageous. It uses the word “always” or “often” when, even at the time of giving of Particulars, there was only *one* incident when the word “fire” was purportedly recalled, and only *one* (separate) incident when the link was made between publications and the timing of the relevant phone call. When four were mentioned in the RTHK problems, four names had to be found. It became painfully clear at the inquiry hearing that at least three of those names (Dr Lai Kwok-chan, Ip Kin-yuen and Dr Wong Ping-man) were brought up just to meet the self-imposed quota of four. But by that time the rules of game had changed. Solid evidence was called for; “loose talks” and bare allegations were no longer sufficient. In the absence of solid memory, the witnesses resorted to embellishment and fabrication of their evidence. The impact of such practices on the credibility of the witnesses is plain to see. And Prof Morris’ recollection regarding the 4th person (Prof Cheng Yin-cheong) was no more solid than the rest.
11. The 3rd Allegation arose from the use of the words “I’ll remember this; you will pay” by Prof Luk as a “literary device” to end his 10,000 word letter. Fortunately on this Allegation, there are contemporary documents, including correspondence which no one expected would be discovered. Firstly, the SMM minutes of 30.6.04 are extremely revealing. Not only was there no reference of any request to “condemn” the PTU and surplus teachers, there was also no mention of the now famous words purportedly said in telephone call from the SEM (assuming that there was what Prof Luk called an “oblique reference” to this conversation at all in the minutes). Then, interestingly, someone noted the statement made by the Registrar Dr Francis Cheung in the Sing Tao Daily, characterizing it as a “misquote”. As it turned out, Prof Luk was the person who raised this

matter though no one had contacted Dr Cheung to verify that the statement was a “misquote”. The truth is, it was *not* a misquote. Thirdly, there was a reference to a “re-training fund”. It is clear, from a letter of the same date by Ng Shun-wing to Prof Luk, that Prof Luk was keen to lobby the PTU for the establishment of that “fund”, no doubt with the financial gain of HKIEd in mind.

12. The surprise revelation came, when the email from Ng Shun-wing to Cheung Man-kwong was discovered.⁵ This shows, plainly, that instead of having direct contact with Mr Cheung in the evening of 29.6.04, Prof Luk merely told Mr Ng what purportedly transpired in discussion between him and the SEM that evening. That account was highly misleading too. This is obvious from the reference to the alleged discussion on “re-training fund” when, according to Prof Luk, the SEM “at first refused, but later softened up and was willing to consider”. This is wholly at variance with Prof Luk’s evidence, and is totally rejected by Prof Li as having been discussed with him. Further, as explained by Prof Li, the reference that Prof Luk had refused to issue a statement at the SEM’s request was also untrue.

13. The give away line, however, lies in the last paragraph, to the effect that Prof Luk had contacted Prof Morris, who was in the UK and had “reached consensus” with him “on the above viewpoints”. So the matter was not, as repeatedly asserted by Prof Morris and Prof Luk, only told about the phone call with the SEM upon his return to Hong Kong in mid-July. It is also not true, as Prof Luk said in evidence, that he felt able to reject the SEM’s request for a statement there and then during the phone call, albeit he was only acting as President, without consulting his colleagues – the excuses being that he did not need to do so and that he had some informal chats with them before hand. The truth is, he *did* consult his colleagues, no less than the President himself and felt it *necessary* to have “reached consensus” with him. The SMM itself was yet another form of consultation. So it made perfect sense that Prof Li would have allowed Prof Luk to take away his direct telephone number, expecting him to call back *after* consulting with the senior management. What would *not* have made any sense was (as suggested by Prof Luk) that the SEM should have wanted him (Prof Luk, who he knew little about) to contact Cheung

⁵ W2/36.

- Man-kwong to try to “mediate” between the EMB and the PTU when SEM was already *directly* in touch with Cheung Man-kwong himself and, as it transpired from the documents, Prof Luk was *not* at the material time.
14. The implication of this is plain. There could *not* have been any utterance of the words “I’ll remember this; you will pay”, except as a “literary device” and a figment of Prof Luk’s imagination. There is every motive for him to smear Prof Li in this way, as he attributed to the SEM all the failures which he and Prof Morris encountered in the contract renewal process.
 15. There was another surprise discovery of document. This time from Prof Luk himself in the middle of the hearing, in response to some powerful evidence coming from the CUHK’s witnesses. It was an incomplete document at first – part of the discussion paper which he himself wrote but never disclosed until then. The complete document was produced later, by another witness. That document shows that the secret negotiations which took place months after the dinner at the Hong Kong Club on 17.4.06 – negotiations initiated by the senior management with the *express* intention not to inform the Council and the Chairman – were on a very tight federation model coming very close to a *full* merger. This document gives the lie to the often drawn distinction throughout the case as presented by Prof Morris and Prof Luk, that the SEM wanted nothing but *full* merger and that they were willing to consider only federation *with a high degree of autonomy*.
 16. This document also shows that this so-called *merger* debate is just another word game played by those adept at it. As pointed out by Dr Lai Kwok-chan, “people use that term to suit their own perceptions and their purposes”.⁶ Indeed, whatever happened to be *expedient* at any particular time. This is best illustrated by the meaningless letter dated 9.10.06 from Prof Morris to Profs Luk and Moore, purporting to record the CUHK’s position at the dinner on 17.4.06, six months after the event: “It would be a merger – a federal arrangement would not be acceptable”.⁷ In reality, what they were proposing to the CUHK, involving the transfer of the powers of the HKIEd’s Council (except

⁶ Day 19/137:18-19 [612].

⁷ MLA1/26/234.

on staffing and estate matters) to the CUHK Council, and within a relatively short time-frame, was anything but a federation with a *high degree of autonomy*. Dr Thomas Leung would have rejected it; the Council would have rejected it. And when the students yelled “selling out” upon Prof Morris telling them about the merger idea in November 2006, such accusation appears in hindsight to be fully justified by the contents of the secret negotiations as now revealed. And when Prof Morris then back-tracked, claiming that his pursuit of federation was not motivated by a wish for re-appointment, it now appears that this is untrue.

17. The SEM, on his part, has never come close to being so explicit as to what model of merger or integration was considered appropriate for the HKIEd, or indeed any institution. His position is consistent throughout, from the time of his presentation to the Council on 28.11.02, to the meeting with Dr Edgar Cheng and Thomas Leung on 12.8.04⁸ and finally to the dinner at Hong Kong Club on 17.4.06 – he was flexible as to the form of merger, the institution to partner with and the time-frame. It is for the institutions themselves to work out what endpoint they want to reach and how fast they want to go. It is a travesty of injustice, and an abuse of language, to say that the SEM wants nothing but a *full* merger.
18. In the last analysis, the SEM is the gate-keeper of the public interests. He also represents the interests of the Government which spends nearly a quarter of its budget on education and have the vast majority of school teachers on its payroll. It is both his prerogative and duty, and indeed those of Government, to have a large say in how those interests are to be pursued. In pursuing those interests, the SEM must always have, and he did have, the bigger picture in mind – the public, and our children’s education, must come first, not the sectoral or vested interests of the few. No one, least of all this Commission, should be misled into thinking that those vested interests should somehow take priority, or the public interests should take second place, just because the banners of “academic freedom” or “institutional autonomy” are being waved and accusations hurled at those seen to stand in the way of the pursuit of those few.

⁸ IE4-350