

ORDERS AND DIRECTIONS
OF THE COMMISSION OF INQUIRY

(Made at the Preliminary Hearing on 6 March 2007)

I. Purpose of the Substantive Hearing of Inquiry

The purpose of the hearing is for the Commission to inquire and make findings and recommendations in accordance with its Terms of Reference that are as follows:

- (1) To ascertain the facts relevant to the following allegations made by Professor Bernard Luk Hung-kay, Vice President (Academic) of the Hong Kong Institute of Education (“the Institute”), in his undated letter to the teaching staff and students of the Institute which was published on the intranet of the Institute on 4 February 2007 and the internet website of Ming Pao News on 5 February 2007 –
 - (a) In January 2004, there was a telephone conversation between Professor Paul Morris, the President of the Institute and Professor Arthur Li, the Secretary for Education and Manpower (“SEM”) in which the latter attempted to persuade Professor Paul Morris to take the initiative to propose a merger of the Institute with the Chinese University of Hong Kong. SEM indicated that otherwise he would allow the then Permanent Secretary for Education and Manpower to have a free hand in cutting the number of students of the Institute (“The First Allegation”).
 - (b) In the past few years, whenever some members of the Institute published articles in local newspapers which criticised the education reform or the education policy of the Government and its implementation, shortly afterwards senior Government Official(s) repeatedly called to request Professor Morris to dismiss such members of the Institute (“The Second Allegation”).
 - (c) In late June 2004, in relation to a protest by a group of surplus teachers, SEM requested Professor Bernard Luk Hung-kay to issue a statement to condemn the teachers concerned and the Hong Kong Professional Teachers’ Union that assisted those teachers, as such assistance would inhibit the employment of fresh graduates of the Institute. Upon

Professor Luk's refusal, SEM said, “你唔肯出咩嗎？好！I'll remember this. You will pay! (我會記著，慢慢跟你算帳)” (“The Third Allegation”).

- (2) To ascertain, on the facts as found, if there has been any improper interference by SEM or other Government Officials with the academic freedom or the institutional autonomy of the Institute.
- (3) On the basis of the findings in (1) and (2) above, to make recommendations, if any, as to the ways and manner in which any advice by the Government to the Institute, with respect to the exercise of the Institute's powers or the achievement of its objects, might be given in future.

II. On the hearing, dates and times

- (1) Unless directed otherwise, the hearing will be open to the public.
- (2) The Commission will commence the substantive hearing of the inquiry in public on Thursday 22 March 2007 and thereafter on 29 and 30 March 2007, and on Mondays to Fridays in April starting from 16 April 2007 (except 23 April 2007) until the conclusion of the hearing.
- (3) The hearing time each day will be from 10 am to 1 pm with a convenient break at about 11:30 am, and from 2:30 pm to 4:30 pm without any break.

III. On the language in which proceedings are to be conducted

The proceedings shall be conducted in English.

IV. On timetable of witnesses

The Commission's counsel will prepare a timetable of witnesses to be called by the Commission. The timetable will need to be revised from time to time. The Commission will from time to time determine and issue the details of the timetable as to when each witness will be heard.

V. On statements to be provided by intended witnesses

- (1) Professor Bernard Luk Hung-kay is to provide to the Commission by 12 noon on Friday 9 March 2007 particulars of the Second Allegation as requested in numbered paragraph 11 of the letter dated 1 March 2007 from Messrs Wilkinson & Grist (solicitors for the Commission).
- (2) Professor Paul Morris, Professor Bernard Luk Hung-kay, Mr Ip Kin-yuen, Dr Pang I-wah, Professor Arthur Li and Mrs Fanny Law Fan Chiu-fun are each to provide a witness statement with all relevant documentation to the Commission by 12 noon on Monday 19 March 2007. The parties are at liberty to obtain copies of such statements from the Commission Secretariat thereafter.
- (3) The Commission will determine which persons will be required to give evidence before it on the subject-matters of the inquiry and witness summonses will be issued to them accordingly.

VI. On order of examination of witnesses

- (1) The procedure of hearing oral evidence is as follows. Each witness has to be either sworn or affirmed. In case a witness gives evidence in a language other than English, an interpreter will translate such language into English. The witness will be examined in chief, telling the Commission what he has personally experienced, although at the discretion of the Commission, he may be allowed to relate relevant matters not personally experienced by him. He will be cross-examined by counsel for other involved parties other than the party calling him and by the Commission's counsel. Thereafter he will be re-examined by counsel for the party calling him.
- (2) If the witness is called by the Commission and considered not related to any of the involved parties, the Commission's counsel will lead the evidence in chief, then the involved parties or their counsel will cross-examine him, and then the Commission's counsel will re-examine.
- (3) A witness who belongs to or decided by the Commission to belong to a party will have his evidence led by that party, cross-examined by other parties, then

by the Commission's counsel, and then re-examined by the party who has led his evidence.

- (4) The Commissioners may at any stage ask any questions of any witness.
- (5) During any stage of the oral evidence, documents may be referred to, and the witness may produce other relevant documents. Each witness is to go through the same procedure.

VII. On legal representation, permission to cross-examine and make final address

- (1) Some potential witnesses, who are clearly involved in the subject-matters of the Commission's inquiry, have made known their wish to appear in the proceedings and be legally represented, and some are today so represented before the Commission. The Commission has decided that Professor Paul Morris, Professor Bernard Luk Hung-kay, Professor Arthur Li, and Mrs Fanny Law Fan Chiu-Fun, and The Hong Kong Institute of Education have sufficient interest in the proceedings to appear and, if they so wish, to be legally represented, and they or their legal representatives as an involved party may, if they so wish, cross-examine witnesses as the Commission may allow and make a final address to the Commission after the conclusion of the hearing of the evidence. The order of cross-examination and final address will be as directed by the Commission.
- (2) The Commission reserves its decision on others whose names are not referred to in (1) above regarding their permission to attend the hearing (through their legal representatives), to cross-examine witnesses, or to make address or final address to the Commission. The Commission will make known its decisions as soon as practicable after the provision of witness statements to it by Mr Ip Kin-yuen and Dr Pang I-wah by 12 noon Monday 12 March 2007.

VIII. On sitting plan

- (1) Counsel for the Commission will, after consulting with the parties' legal representatives, decide on the sitting plan.

- (2) At the commencement of substantive hearing on Thursday 22 March 2007, the Commission Secretariat will prepare name cards on the desks to show the place where legal representatives for each party should be seated, so that they will know where they should be seated, and the Commissioners will know who they are and whom they represent.

IX. On confidentiality or privilege of documents

- (1) All the parties shall supply all relevant documents to the Commission by Monday 12 March 2007.
- (2) The parties who have or will have supplied documents to the Commission are each to identify the bundles or files on which privilege or confidentiality is claimed by Monday 12 March 2007.
- (3) The Commission will hear the parties on issues relating to privilege or confidentiality on Wednesday 14 March 2007 if necessary.
- (4) Whenever a party claims confidentiality or privilege, specific grounds of the claim should be provided to the Commission by the deadline as in (1) above.

X. On media

Members of the media are allowed to remain in the hearing room at their assigned place. They may report the proceedings, but they are not allowed to record the proceedings with the use of any listening, audio or optical device. No photographing, videoing or filming of the proceedings is allowed.

XI. On communication to or by the Commission

The Commissioners and counsel and solicitors for the Commission will not discuss matters pertaining to the subject-matters of the inquiry with members of the public or the media during the currency of these proceedings.

Dated this 6th day of March 2007.

(Mr. Esmond LEE)
Secretary to the Commission