

**Commission of Inquiry on Allegations relating to
The Hong Kong Institute of Education**

Opening Submissions by Counsel for the Commission

1. *Terms of Reference*

1.1 This Commission was appointed by the Chief Executive in Council on 15 February 2007 under the Commissions of Inquiry Ordinance, Cap. 86, with the following terms of reference –

(a) 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 (“**HKIED**”), in his undated letter to the teaching staff and students of HKIED 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:-

(i) In January 2004, there was a telephone conversation between Professor Paul Morris, the President of HKIED, 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 (“**PSEM**”) to have a free hand in cutting the number of students of the Institute (“**The First Allegation**”).

(ii) 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 **HKIED**

(“The Second Allegation”).

(iii) 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**”).

(b) 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 HKIED.

(c) On the basis of the findings in (a) and (b) above, to make recommendations, if any, as to the ways and manner in which any advice by the Government to the HKIED, with respect to the exercise of the HKIED’s powers or the achievement of its objects, might be given in future.

[**CB/1/1**]

1.2 The Commission is to report to the Chief Executive its findings and conclusions within four months of its appointment, i.e. by 14 June 2007.

1.3 By G.N. (E) 9 of 2007, the Chief Executive in Council appointed the Hon Mr Justice Yeung, Justice of Appeal, to replace the Hon Mr Justice Woo, Vice-President, as Commissioner and Chairman of the Commission [**CB/2/4-1**].

2. *Interested Parties*

The Commission has allowed the following parties to be represented at the hearing of the Inquiry as implicated or concerned parties:

2.1 Professor Bernard Luk Hung-kay;

- 2.2 Professor Paul Morris;
- 2.3 Professor Arthur Li;
- 2.4 Mrs Fanny Law Fan Chiu-fun, and
- 2.5 The HKIEd.

3. *Independence of the Commission*

- 3.1 Although this Commission has been appointed by the Chief Executive in Council, *it is totally independent of the Government.*
- 3.2 Since the hearing of the Inquiry will be public (save for exceptional situations when confidential documents or information, which for good reasons should not be disclosed to the public, are being referred to), the public will be able to see for themselves the conduct of this inquiry and come to their own judgment on the independence and impartiality of the Commission.
- 3.3 The parties and members of the public are reminded that this is a judicial proceeding. The *sub judice* rule applies to such inquiry proceedings. There should not be any publication that is likely to prejudice the fair determination of the inquiry, such as publicly commenting on whether a witness is credible or not, or a certain person or organisation is or should be responsible for matters which form part of the subject matter of the inquiry, in other words, prejudging the merits or findings of the Commission.

4. *Public Interest*

- 4.1 This Commission has been set up to look into allegations relating to the HKIEd. The allegations have been made by Professor Luk about improper interference by senior government officials with academic freedom or the institutional autonomy of the Institute. These allegations are taken seriously because our society treasures academic freedom as a core value that must not be allowed to be eroded. It is a

matter of great public importance that this Commission investigates these allegations thoroughly.

- 4.2 This Commission has been entrusted with establishing the facts relevant to the allegations; ascertaining if there has indeed been any improper interference with the Institute's academic freedom or institutional autonomy; and recommending the ways and manner in which advice by the Government to the Institute might be given in the future, with respect to the exercise of the Institute's powers or the achievement of its objects.
- 4.3 The Commission will, in the conduct of this Inquiry, always bear in mind that this Inquiry is undertaken in the public interest and be guided accordingly. Public interest dictates that this Inquiry should be proceeded with as expeditiously and cost-effectively as possible.

5. *Nature of proceedings*

- 5.1 Pursuant to section 11 of the Commissions of Inquiry Ordinance, Cap. 86, this Inquiry shall be deemed to be a judicial proceeding. However, unlike usual judicial proceedings, the Inquiry is inquisitorial in nature.
- 5.2 Since its appointment, the Commission has written to various individuals and organisations to ask for documents and for the provision of witness statements. This process is continuing. Those parties who wish to have access to the Commission's correspondence with individuals/organizations may inspect and take copies from the Commission's correspondence files, other than those which have been requested to be treated as confidential.

6. *The Allegations*

- 6.1 There are 3 allegations and it is helpful to note the approximate dates when the relevant events are said to have occurred.

- 6.1.1 The 1st date is 30 October 2002 which is allegedly the first occasion in relation to the 2nd Allegation when Mrs Fanny Law allegedly requested dismissal of Mr Ip Kin-yuen and Dr Lai Kwok-chan [see letter from Boase Cohen & Collins dated 12 March 2007 **CB/5/159**].
- 6.1.2 The 2nd date is January 2004 which is allegedly the occasion when Professor Li and Professor Morris had the telephone conversation giving rise to the 1st Allegation.
- 6.1.3 The 3rd date is late June 2004 which is allegedly the occasion when Professor Li and Professor Luk had the telephone conversation which gave rise to the 3rd Allegation.
- 6.1.4 The 4th date is late November 2004 (probably 19 November 2004) which is allegedly the 2nd occasion under the 2nd Allegation when Mrs Fanny Law allegedly requested dismissal of Dr Wong Ping-man [see letter from Boase Cohen & Collins dated 12 March 2007 **CB/5/159**].
- 6.1.5 The 5th date is November 2004 which is allegedly the 3rd occasion under the 2nd Allegation when Mrs Law allegedly requested dismissal of Professor Cheng Yin-cheong [**CB/5/159**].
- 6.1.6 The 6th date is 21st April 2005 which is allegedly the 4th occasion under the 2nd Allegation when Mrs Fanny Law allegedly requested dismissal of Mr Ip Kin-yuen and Professor Cheng Yin-cheong [**CB/5/159**].

7. *The Background*

- 7.1 The allegations are hotly disputed and the Commission will hear evidence and submissions before coming to its conclusions. The evidence is, however, not to be considered in vacuum, but against the background of events which we believe are largely undisputed. We set out below some of the more salient matters.

HKIEd

- 7.2 The HKIEd was established by the Hong Kong Institute of Education Ordinance, Cap. 444. The HKIEd is an autonomous body with its own governing council. From 1997 until April 2003 Mr Simon Ip was the Chairman of the Council [IE18/13]. Dr Thomas Leung took over as the Chairman and remains in that position up to the present date.
- 7.3 Professor Morris is and was at all material times the President of the HKIEd. Professor Luk is and was at all material time the Vice-President (Academic) of HKIEd.

Education and Manpower Bureau (“EMB”)

- 7.4 Before 1 January 2003, the EMB was responsible for formulation of policy whilst the Education Department (“ED”) was responsible for implementation of education policy. The EMB and ED were merged into the new EMB on 1 January 2003 to strengthen the link between policies formulation and implementation.
- 7.5 Professor Arthur Li was appointed SEM with effect from 1 August 2002. He continued to be SEM up to the present [EMB10/4, 7].
- 7.6 Mrs Fanny Law was the SEM from 3 July 2000 to 30 June 2002. As from 1 July 2002 until 31 October 2006, Mrs Fanny Law was the PSEM [EMB10/4, 7].

Background relevant to 1st Allegation: Student numbers

- 7.7 The HKIEd is one of the 8 institutions funded through the University Grants Committee (“UGC”). The UGC is appointed by the Chief Executive of the Hong Kong Special Administrative Region and its remit is, inter alia, to advise the Government on the application of such funds as may be approved by the Legislature for higher education in the universities and designated institutes.
- 7.8 The UGC has stressed that admission of students is a matter for the HKIEd, and the UGC or the Administration will not determine the number of students that the HKIEd may admit. Rather, the UGC sets a student target number that would receive funding through the UGC.

The level of recurrent grants to be provided by the Government to UGC-funded institutions is primarily based on the approved student number targets and the approved Academic Development Proposals (“ADP”) of the institutions. Hence, any change in student target numbers will affect the level of recurrent funding.

- 7.9 The UGC normally follows a triennial planning cycle. 1998-2001 was one triennium. The procedure is set out in the Notes at **UA Annex A**. Broadly, the procedure starts with a “Start Letter” from the UGC to the institutions, followed by an ADP and costs estimates put forward by the institution.
- 7.10 The UGC takes advice from the Administration on manpower requirements in the disciplines and professions where the public sector is the major employer. This includes the teaching profession.
- 7.11 The approved student numbers for the HKIEd in the 2001-2004 triennium are set out in the allocation letter dated 9 March 2001 at **[U1/1A]**.
- 7.12 In November 2002, the Government accepted the UGC’s recommendation that 2004-2005 would be a roll-over year **[EMB5/133]** See also **[U1/14]**. This meant that the 2001/2004 triennium was to be extended to include 2004/2005 while the new triennium would only start in 2005/2006.
- 7.13 The student numbers for the 2005-2008 triennium would be decided in the year preceding the beginning of the triennium, i.e. in 2004.
- 7.14 Thus, on 21 January 2004, the UGC sent the “Start Letter” to the HKIEd **[U2/57]**. The letter was written after the UGC sought formal advice from the Administration on the anticipated manpower requirements for specific sectors including teachers: see the letter dated 14 January 2004 **[U2/55=EMB3/239]** and **the** letter dated 20 January 2004 **[U2/56=EMB3/243]**. The letter of 21 January 2004 shows a reduction in student numbers for C(ECE) (i.e. Certificate for Early Childhood Education) in the year 2007/2008 which was a programme run exclusively by the HKIEd. This was followed by a

further letter dated 17 February 2004 from the UGC to the HKIEd stating that the EMB had agreed to make some changes to their overall requirements. [U2/60] The changes were made after discussion between the EMB and the UGC Secretariat: see the EMB's letter of 13 February 2004 [U2/59]. In the 17 February 2004 letter, the total places for FYFD (i.e. First year First Degree) primary level over the whole triennium was reduced from 1330 in the Start Letter to 1050. There were increases for places for FYFD at the secondary level and for places for PGDE (i.e. Postgraduate Diploma in Education). These changes affected all four institutions (including the HKIEd) which ran teacher education programmes.

7.15 On the C(ECE) figures, an internal memo from the UGC to the EMB dated 17 March 2004 suggests that the figure of “0” for 2007/2008 should be changed back to “200”. [EMB3/317]. The Allocation Letter for the 2005/2008 triennium was issued by the UGC on 7 May 2004 [U2/85=MLB/115].

7.16 The 1st Allegation relates to a telephone conversation between Professor Morris and Professor Li in January 2004. This was the time when the EMB rendered its advice to the UGC and the UGC were issuing their Start Letter. Professor Luk has complained that some of the reductions “cannot be explained on educational or planning grounds”: see his presentation to the Education Panel of Legco on 28 February 2007 [ML-A/142 at 143] See also his witness statement para. 5.42 et seq at 5.45 [W1/131-132].

Merger

7.17 In March 2002, the “Sutherland Report” was published. This is a report by the UGC on “Higher Education in Hong Kong” published by a committee chaired by Lord Sutherland (Principal and Vice-Chancellor of University of Edinburgh). This report can be found in DOJ's Bundle 5 on Merger and Collaboration at [EMB5/6 to EMB5/92; IE7/82].

7.18 One of the recommendations of the Sutherland Report was that “a small number of institutions be strategically identified as the focus of

public and private sector support with the explicit intention of creating institutions capable of competing at the highest international levels.”
[EMB5/11]

- 7.19 There were at the time media reports quoting Professor Arthur Li, then V-C of the Chinese University of Hong Kong (“CUHK”) suggesting a merger between the HKIED with the Hong Kong University of Science and Technology (“HKUST”) and the CUHK. See [ML-A/98 to 103].
- 7.20 The HKIED responded with a Press Release dated 3 April 2002 stating it had no current plan to merge with other tertiary institutions: [EMB5/93]. The Chairman of the HKIED Council (Mr Simon Ip) wrote to the Chief Executive putting forward a paper setting out the HKIED’s initial response on the subject of merger: [EMB5/95 to 100]. The matter had been discussed at a Council meeting and merger was not ruled out: [IEEM1/64]. The initial response was prepared by Professor Morris.
- 7.21 Professor Arthur Li was appointed the SEM as from 1 August 2002. Some 2 months later, there were press reports in early October 2002 quoting him as saying “相睇成功” and “權在我手”“先禮後兵”; see e.g. [IE4/36; N2/41-43].
- 7.22 In early 2003, the HKIED established a Task Force to consider the future role and positioning of the HKIED to deliberate on the recommendations and implications of the Sutherland Report, see letter from Prof Morris to Dr Alice Lam, Chairman of the UGC [EMB5/152; see also Dr Leung’s witness statement para. 9 W1/56].
- 7.23 At a meeting of the UGC in August 2003 attended by Professor Li, Professor Li said it had become increasingly important for institutions to seek collaboration with one another in order to develop a critical mass and build up extra capacity for further advancement. Institution integration was a way to achieve this. [U1/27]=[EMB5/156].
- 7.24 In January 2004, the UGC published a report entitled “Hong Kong Higher Education, To Make a Difference; To Move with the Times” [EMB5/191]. In para. 23 of this report, the UGC stated that it “wishes

to see much more active and deep collaboration among institutions, within and outside Hong Kong.” [EMB5/202].

- 7.25 It is to be noted that the telephone conversation which is the subject of the 1st Allegation is said to have taken place in this period, i.e. January 2004.
- 7.26 In February 2004, there was a meeting attended by Professors Morris & Luk, Dr Thomas Leung with Professor Li: see Leung’s w/s para. 13 [W1/57] and the undated letter of Professor Luk para. 17 [CB/3/9]. Dr Leung’s version of the meeting is at paras 13-18 of his witness statement [W1/57]. Professor Morris’ version is at para. 27 of his witness statement [W1/90]; Professor Luk’s version is at para. 5.25 to 5.32 [W1/126-128].
- 7.27 There is a letter from Professor Li to Chairman of the UGC dated 13 February 2004 where he said he would like to see closer collaboration between the HKIEd and other UGC-funded institutions in developing degree cum teacher education programmes: [EMB3/258 at 259].
- 7.28 In February 2004, the HKIEd Task Force produced their report. The Task Force recommended that the HKIEd should continue to work collaboratively with other institutions on specific subjects, see LTFK-5. The HKIEd Council endorsed the recommendations in this report: minutes of the HKIEd, see [IEEM1/120] para. 5(i).
- 7.29 In March 2004, the UGC published the “Niland Report” [EMB5/236]. Professor Niland was the convenor of the Institution Integration Working Party (IIWP). The IIWP was established by the UGC to explore feasibility of institution integration. The Niland report explains the “Merger Model” [EMB5/257] and “Deep Collaboration Model” [EMB5/262].
- 7.30 The HKIEd held 2 retreats in April and June 2004 to brain-storm the way forward regarding institution integration. Many witnesses referred to the Chairman, Dr Thomas Leung, as using the expression “death by a thousand cuts” on the occasion during the April 2004 retreat. Dr Leung explained what he meant in his witness statement paras. 31.

Basically he denies that he was saying the HKIEd must merge with CUHK but used the phrase to “paraphrase this likely scenario as the unfavourable demographics would result in funding cuts.”

- 7.31 The Retreats resulted in a Report [LKFT-9 E2/40] at which the consensus was against a full merger as defined in the Niland report; but to encourage deep collaboration among institutions.
- 7.32 In July 2005, a Deep Collaboration Agreement was entered into between the HKIEd and the CUHK [LKFT-13 E2/62].

The parties' evidence re the 1st Allegation

- 7.33 Professor Morris' witness statement paras. 24-26 [W1/89-90];
Professor Luk's witness statement para. 5.8-5.11 [W1/123-124];
Professor Li's witness statement paras 3.1-3.22 [W1/168-175];
Mrs Law's witness statement paras. 29-46 [W1/156-160].

Background relevant to the 2nd Allegation : Articles critical of education policies

- 7.34 In 2000, the Education Commission published a blueprint of education for the 21st century entitled “Reform Proposals for the Education System in Hong Kong”. The core objectives of the reform are to motivate students to learn, and teach them how to learn on their own; in other words, to develop self-directed life-long learners.
- 7.35 There are 7 major initiatives in the education reform (1) curriculum reform (2) assessment mechanisms (3) language education (4) support for schools (5) professional development (6) student admission systems and (7) increase in post-secondary opportunities.
- 7.36 Some of these reforms have been said to give rise to substantial increase of workload for teachers and principals.
- 7.37 In 2003/2004, the Financial Secretary set the targets of bringing down total government operating expenditure to \$200 billion, and 20% of GDP or below, by 2008/2009. To achieve these targets, government

departments and bureaux were expected to achieve 11% savings in 5 years.

7.38 At the same time, there was a sharp decline in the number of school-age children. The EMB adopted policies aimed at achieving substantial savings in reducing number of classes. There were calls on the EMB to take the opportunity to reduce students to teacher ratio and introduce “small class teaching” [小班教學].

7.39 The particulars dated 9 March 2007 provided by Professors Morris and Luk refer to a bundle of newspaper cuttings: [CB/5/16-148]. More specific allegations are made in the witness statement of Professor Morris at paragraphs 48-61 [W1/99-105].

Parties’ evidence re the 2nd Allegation

7.40 Professor Morris’ witness statement paras. 48-61 [W1/99-105]; Mrs Fanny Law’s witness statement paras. 47-55 [W1/160-162].

Background relevant to 3rd Allegation: Protests by surplus teachers

7.41 Due mainly to a decrease in the number of students enrolled, some primary schools experienced reduction of classes, resulting in some teachers being made redundant. Up to about 2002, schools adopted a “last in, first out” (“LIFO”) arrangement as recommended by the ED in the 1970s at the request of the teachers’ union. Under this arrangement, when there is a need for making teachers redundant, temporary teachers are made redundant first, followed by permanent teachers according to their length of service in the school. A permanent teacher with the shortest length of service (i.e. “last in”) will be the first to be made redundant. The ED required schools to adopt the LIFO arrangement unless there are very special reasons in support.

7.42 In October 2002, the Director of Audit criticized the LIFO arrangement to be at variance with good human resource management practices; and to have the risk of alienating good teachers and rewarding mediocrity: see **EMB7/5** para. 4.7.

- 7.43 As a result and after consultations in early 2003, the EMB introduced an arrangement called “Priority Appointment Period” (“**PAP**”) under which all teaching vacancies will be frozen for a period to enable redundant teachers to be redeployed: see the EMB Circulars No. 45/2003 [**EMB7/17**].
- 7.44 In October 2003, the Ombudsman, pursuant to a complaint made by teacher-graduates who were disadvantaged by the introduction of the PAP, conducted an investigation on the arrangement, see [**EMB7/96; 214**]. In view of the Ombudsman’s investigation being in progress, the EMB set the PAP to end in June 2004: EMB Circular Memorandum 318/2003: [**EMB7/215 at 218**].
- 7.45 In May 2004, the Ombudsman published its findings and report which criticized the PAP arrangement as imposing restrictions on schools in their employment of teachers, contrary to the spirit of school-based management, and commented that the EMB had paid little attention to the interests of the HKIEd fresh graduates in the 2003 priority arrangements: [**EMB7/282 at 286**]. On 20 May 2004, the EMB issued a press release welcoming the Ombudsman’s recommendations on surplus teacher arrangements: [**EMB7/290**]. On 21 May 2004, the HKIEd also issued a press release welcoming the Ombudsman’s report: [**EMB7/292**].
- 7.46 In June 2004, the Professional Teachers’ Union (“**PTU**”) organized protests and fasts in support of the surplus teachers: [**EMB7/299 to 301**].
- 7.47 On 28 June 2004, Professor Li attended a meeting with the representatives of the PTU in which both sides set out their positions: [**EMB7/304**].
- 7.48 The telephone conversation between Professor Li and Professor Luk which was the subject of the Third Allegation took place in the above context.

Parties’ evidence re the 3rd Allegation

- 7.49 Professor Luk's witness statement paras. 5.47-5.49 [W1/132-134];
Professor Li's witness statement paras. 5.1-5.9 [W1/176-180].

8. *Witnesses*

- 8.1 From the information and documents supplied, we have sought to identify potential witnesses whose evidence may be of assistance to the work of the Commission. We have also requested witness statements to be provided to the Commission. Thus far, we have requested witness statements from over 20 individuals.
- 8.2 As the witness statements come in, we shall consider whether it is necessary to call the individuals to give oral evidence at the public hearing. We shall be providing the parties and the public with a provisional time table from time to time. The provisional timetables will be available from the Secretariat and posted on the website of the Commission. The order of the witnesses is provisional only and the estimated length of each witness' testimony is only an estimate. The order of witnesses and the dates when they are required to give oral evidence will almost certainly have to be revised from time to time.
- 8.3 The fact that we shall commence calling witnesses to give oral evidence does not mean that we would cease requesting information and documents, whether from those who have already participated in the hearing or otherwise. This process will continue.
- 8.4 There are some witnesses whom we do not propose to call but intend to place their statements before the Commission for the Commission to give such weight as it thinks fit to the witness statements. We shall inform the parties which witnesses come within this category. The parties are of course entitled to make an application to the Commission for those witnesses to be called and to be cross-examined.
- 8.5 As to the order of witnesses, broadly speaking, we shall be calling Professor Morris first, followed by Professor Luk and some of the members of staff of the HKIED., before calling Professor Li and Mrs

Fanny Law.

Dated 27 March 2007

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