

(For hearing before Commission of Inquiry at 9:30 a.m.  
on 5.6.2007 & 6.6.2007)

**Re: Commission of Inquiry on the Allegation relating to**  
**The Hong Kong Institute of Education**

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**CLOSING SUBMISSIONS FOR**  
**PROFESSOR MORRIS AND PROFESSOR LUK**

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## **A. INTRODUCTION**

1. On or about 4.2.2007, Professor Bernard Luk Hung-kay (“Prof Luk”), Vice President (Academic) of The Hong Kong Institute of Education (“HKIED” or “the Institute”), published on the intranet of the HKIED a letter to all the staff and students of the Institute (“the Internet Letter”). [Core Bundle/p.1]
2. The Internet Letter was reproduced on the internet website of Ming Pao News on 5.2.2007. [Core Bundle/p.1]
3. The purpose of Prof Luk in writing the Internet Letter was set out in detail in paragraph 7 of his witness statement dated 23.3.2007. [W1/141-148]
4. On 15.2.2007, the Chief Executive (“CE”) in Council appointed the Commission under the Commissions of Inquiry Ordinance, Cap. 86 to inquire into three allegations made by Prof Luk. The CE in Council is of the opinion that the matters which arose out of Prof Luk’s Internet Letter are matters of public importance.
5. The Terms of Reference of the Commission are set out in G.N.(E.) 5 of 2007. [Core Bundle/p.1]
6. Prof Paul Morris (“Prof Morris”) and Prof Luk are persons concerned in the subject matter of the inquiry by virtue of section 6

of the Commissions of Inquiry Ordinance. On 6.3.2007, the Commission granted leave to Prof Morris and Prof Luk to be legally represented on the basis that they have sufficient interest in the proceedings before the Commission. [Core Bundle/p.163]

## **B. BACKGROUND**

7. It is submitted that the documents and evidence produced in this Commission clearly demonstrate that:

(1) There is not and has never been a government policy to reduce the number of tertiary institutions by merger or even federation.

(2) There has been a policy to promote deep collaboration which the HKIEd has actively implemented. In fact, HKIEd has pioneered joint programmes. New initiatives were rejected by EMB/UGC.

(3) There is no policy basis to justify phasing out the BEd programmes and replacing them by 2+2 programmes. This action is based on the personal wishes of the SEM.

(4) The SEM is not interested in deep collaboration at programme level. He is only interested in a merger which is dressed up in expressions such as “wider” and “intensified” deep collaboration at “institutional level”.

8. The basis for the above submissions is set out in the Appendix to this Closing Submissions.

### C. THE LAW

9. One of the tasks of the Commission of Inquiry is to ascertain if there has been improper interference by the SEM and/or the PSEM with the **academic freedom** or **institutional autonomy** of the Institute.  
[Core Bundle/p.1, para (c)]

#### (I). The Basic Law of the HKSAR

10. It is of vital importance to recognise from the outset that academic freedom and institutional autonomy of all educational institutions in Hong Kong are constitutionally guaranteed by the Basic Law of the HKSAR.

11. Article 137 of the Basic Law expressly provides that:

*“Educational institutions of all kinds may retain their **autonomy** and enjoy **academic freedom**. ... .”* (emphasis added)

#### (II). The Hong Kong Institute of Education Ordinance, Cap. 444

12. Institutional autonomy of the HKIEd is further recognised by the enactment of the Hong Kong Institute of Education Ordinance, Cap. 444 in 1994 (“HKIEO”) which established the HKIEd as a body corporate with power in that name to sue and be sued: section 3(1) HKIEO
13. Section 3(2) HKIEO provides that the objects of the HKIEd are to provide teacher education and facilities for research into and the development of education.

14. Section 4 HKIEO enumerates a list of powers exercisable by the HKIEd in furtherance of its objects. Subject to the power of the Chief Executive in Council, the HKIEd may exercise these statutory powers autonomously so far as it is in furtherance of its objects.

**(III). Declaration on Academic Freedom and Autonomy of Institutions of Higher Education 1988 (“Lima Declaration”)**

15. Neither the Basic Law nor the HKIEO defines academic freedom or institutional autonomy.

16. Assistance may be sought from the Declaration on Academic Freedom and Autonomy of Institutions of Higher Education 1988 (“Lima Declaration”).

17. Lima Declaration was adopted in the 68<sup>th</sup> General Assembly on 10 September 1988 by the World University Service, which is an international non-governmental organisation focusing on education and human rights.

18. Lima Declaration is referred to in the HKU Hearings on Pollster’s Allegations. It was said to be endorsed by the HKU in its Senate meeting on 1 March 1994. [Transcripts, 21 August 2000, Day11, page 19, line 19 to page 20, line 9 of the HKU hearing.]

19. Therefore, the applicability of the Lima Declaration in one of the

institutions of higher education in Hong Kong is recognized. It is submitted that Lima Declaration should apply generally to all institutions of higher education in Hong Kong including the HKIEd.

20. “Academic freedom” is defined by paragraph 1 of the Lima Declaration as:

*“the freedom of members of the academic community, individually or collectively, in the pursuit, development, and transmission of knowledge, through research, study, discussion, documentation, production, creation, teaching, lecturing and writing.”*

21. “Autonomy” is defined to be:

*“the independence of institutions of higher education from the State and all other forces of society to make decisions regarding its internal government, finance, administration and establish its policies of education, research, extension work, and other related activities.”*

22. “Academic community” covers all those persons teaching, studying, doing research, and working at an institution of higher education.

#### *Academic Freedom*

23. The concept of academic freedom is further elaborated in paragraphs 3, 4, 5 and 6 of the Lima Declaration, which provide

that:

*“3. Academic freedom is an essential precondition for those education, research, administrative, and service function with which universities and other institutions of higher education are entrusted. All members of the academic community have the right to fulfill their functions...without fear of interference or repression from the State or any other source.*

*4. States are under an obligation to respect and to ensure to all members of the academic community those civil, political, economic, social, and cultural rights recognised in the United Nations Covenants on Human Rights. Every member of the academic community shall enjoy, in particular, freedom of thought, ... expression, assembly, and association...”*

*5. ... No member of the academic community shall be dismissed without a fair hearing before a democratically elected body of the academic community.”*

*6. All members of the academic community ... have the right to communicate the conclusions of their research freely to others and to publish them without censorship.” (emphasis added)*

### *Institutional Autonomy*

24. Paragraphs 18 and 19 of the Lima Declaration provide:

*“18. The proper enjoyment of academic freedom and the compliance with the responsibilities mentioned in the foregoing articles demand a high degree of autonomy of institutions of higher education. States are under an obligation not to interfere with the autonomy of institutions of higher education as well as to prevent interference by other forces of society.*

*19. The autonomy of institutions of higher education shall be exercised by democratic means of self government, which includes the active participation of all members of the respective academic communities...The autonomy should encompass decisions regarding administration and determination of policies of education, research, extension work, allocation of resources, and other related activities.”*  
(emphasis added)

#### **(IV). UGC Notes on Procedures**

25. The UGC Notes on Procedures give further insight to the understanding among institutions in Hong Kong in respect of academic freedom and institution autonomy.

26. The forward of the Notes of Procedures provides that the UGC “Notes of Procedures”:

*“form the basis of understanding amongst the UGC, the Government and the institutions of their mutually dependent roles”. [UA/p.1]*

27. Chapter 1 of the Notes on Procedures sets out, *inter alia*, five aspects of institutional autonomy enjoyed by the eight UGC-funded institutions (including HKIEd). It provides that:

*“The Institutions*

*1.20 The eight higher education institutions funded through the UGC are statutorily **autonomous** corporations, each with its own Ordinance and Governing Council. They enjoy **academic freedom** and considerable **institutional autonomy**, subject to the constraints of financial dependence. [UA/p.5]*

*Institutional Autonomy*

*1.21 Institutional autonomy is a complex term, and the degree of autonomy required varies, but the essential point is that **the institutions are legally entitled to freedom of action in managing their affairs** within the restraints of the laws of Hong Kong. **The claim for autonomy does not rest upon any assumption of special privileges, but upon the consideration (based on long experience) that the institutions can properly undertake the work expected of them by the community which supports them only if they have freedom of choice and of action.** This does not exempt them from public interest and criticism, nor does it mean that their policies should not be under review by themselves, and by others. [UA/p.5]*

“1.22 *The five main areas of institutional autonomy are –*

*(a) Selection of staff*

*The institutions have unfettered rights in the selection, promotion, and dismissal of their staff. In the case of appointment of the Head of the institution, however, the importance of the post is such that some degree of consultation with Government and community leaders is desirable and normal. Nevertheless, the institutions' Councils take the final decision, and make the formal appointment. [UA/p.5]*

*(b) Selection of students*

*Whatever may be the procedures for setting or controlling entrance examinations, or for setting total student number targets, or for setting student number intake targets, the institutions have unfettered rights in the selection or rejection of students presented as candidates for admission. [UA/p.5]*

*(c) Curricula and academic standards*

*The institutions will need to take into account the other developments and requirements in other fronts e.g. primary and secondary education, other further education facilities, requirements for practising certain professions, general or specific employment opportunities, etc. and these are areas in which the UGC and the Government also have interests.*

*Moreover, some standards and qualifications can only be attained if appropriate finance is made available, and decisions may therefore be dependent on financial resources. Nevertheless, final decisions on their own curricula and standards rest with the institutions. [UA/p.5]*

*(d) Acceptance of research programmes*

... ..

*(e) Allocation of funds within the institution*

... ..” (emphasis added) [UA/p.5]

28. These areas of institutional autonomy have largely been reflected in the constituting Ordinances of the eight UGC-funded institutions.

**(V). Mrs Fanny Law’s Evidence on Academic Freedom**

29. At the very end of her re-examination, Mrs Fanny gave her own definition of academic freedom which is wholly wrong and misconceived.

30. First, she referred to the Report submitted to the Council of the University of Hong Kong by the Independent Investigation Panel in 2000. She proclaimed that:

*‘I think the independent investigation panel on the HKU investigation some years ago did have a definition of academic*

*freedom and I'd like to share this with you, which is something that I believe in. What it says here is:*

*“Academic freedom is the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence without any control of authority except the control of the authority of the rational methods by which truth is established.” [Day31, p.195, line 3 to line 13]*

31. Mrs Law has, however, conveniently left out the most important part of the definition of academic freedom adopted by the Independent Investigation Panel in 2000.

32. Paragraph 11 of the Report states that:

“11. The Panel adopted a definition of academic freedom which we set out as follows<sup>1</sup>:

*Traditionally academic freedom refers to the liberty of a person to carry on intellectual investigation in a scholarly manner within the structure of the academic community. In current secular terms, it is typically defined narrowly as “the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence, without any control of authority except the control of the authority of the rational methods by which truth is established.”<sup>2</sup>*

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<sup>1</sup> From an essay on “Academic Freedom and the University” by Donald W. Wuerl published in *Issues in Academic Freedom* edited by George S. Worgul, Jr. (Duquesne University Press, 1992), p. 58.

<sup>2</sup> Sidney Hook, *Heresy, Yes, Conspiracy, No* (New York: John Day, 1953), p. 154.

*It is the secular definition that serves as the model for much of the discussion today.*

*When considered in this way, as a process, it includes:*

- 1. the unhindered freedom to explore a given subject to the extent that our rational powers of investigation are capable; and*
- 2. the freedom to do so without influence or pressures external to the process.*

This definition was put to all the principal witnesses and none took any exception thereto.”

33. Mrs Law then ventured to offer her own distorted understanding of the definition of academic freedom. She said:

*“A: ... .. So this freedom is very much restricted to the pursuit, the academic pursuit. I think academic freedom also brings with it an academic duty, which includes --*

*... ..*

Chairman: Accountability is the normal term?

*A. Duty and accountability, a duty to assure intellectual honesty and rigour in generating new knowledge, a duty to students to prepare them for a productive and rewarding life and also a duty to the community. I think this part is also very important, acting both as the guardian of the society’s cultural attainments and I would*

*add ethical standards. I really believe that **ethics** is really the halo that wins the academia the respect that it deserves. Academic freedom is not really a licence to simply promote parochial interests, but rather to really serve the interests of the community. That is my view about academic freedom and I think in his higher education review, Lord Sutherland also said that freedom is negotiated. There is no unrestrained freedom.” [Day31, p.195, line 14 to p.196, line 7]*

34. Mrs Law’s view is clearly not the one endorsed by the Independent Investigation Panel in 2000.
  
35. It is submitted that it is grossly improper for Mrs Law to only mention this distorted definition at the very end of her evidence so that she could not be challenged in cross-examination on this aspect, and was thus able to mislead the public through the public media. The proper manner and time for a party to advance a definition is through his/her counsel’s final submission, and no counsel would advance such a skewed definition of academic freedom.
  
36. However, if Mrs Law believed in her own restrictive definition of academic freedom, there would be every reason for her to interfere whenever an author had published in a non-scholarly medium, such as a newspaper, any article critical of the EMB which is not, in her view, properly based on research. In other words, her skewed view of academic freedom would make it much more probably for her to

interfere, perhaps unknowingly, with academic freedom.

37. While Prof Morris and Prof Luk do not dispute the definition of academic freedom adopted by the Independent Investigation Panel and the fact that academics have to be accountable under the law, they certainly do not accept that “*this freedom is very much restricted to the academic pursuit*”. For such a definition would necessarily restrict the fundamental right to freedom of expression.

**D. SUBMISSIONS IN RESPECT OF THE ALLEGATION OF  
“RAPING”THE HKIED**

**(I). DREAM/PERSONAL AGENDA OF PROF LI FOR MERGER**

38. It seems clear now that the Government has no policy for a full merger of the eight educational institutions in Hong Kong.

39. It is also not disputed that there is no change of the Government policy in relation to the role played by the HKIED as set out in Part B above and the Appendix.

40. It is submitted that it was (and still is) the dream/personal agenda of Prof Li to force the merger between HKIED and the Chinese University of Hong Kong (“CUHK”) without the blessing of the Exco.

**Taking Up the Position of SEM**

41. Under cross examination by Mr. Martin Lee, SC, Prof Li gave evidence that he was approached by Mr. Tung Chee Hwa, the then CE, for the first time in around February 2002 for the post of SEM.  
[Day35, p.158, lines 12-17]

42. They sat and chatted for about an hour and the then CE wanted to

know Prof Li's views on the education landscape, education reform and what he thought about the current teachers and research and the direction of education in Hong Kong. [Day35, p.158, line 11 to p.159, line 3]

43. When he was asked whether his aspiration to see mergers in Hong Kong among universities was shared by the then CE, Professor Li did not answer the question directly. He evasively answered, "*We talked of many things*". [Day35, p.159, line 9-12]

44. When being pressed by Mr Lee, SC, Prof Li admitted that he met the then CE again in around March 2002 [Day35, p.159, line 19] and that the then **CE made an offer to him for the post of SEM at the end of March or in the beginning of April.** [Day35, p.159, lines 24-25].

45. Prof Li **committed to the then CE to take up the post of SEM in the end of May 2002 or the beginning of June 2002.** [Day35, p.157, lines 4-9]

46. The announcement of Prof Li's appointment was made on 24.6.2002 [Day33, p.16, lines 16-20]. He took the oath of office with other secretaries together on 1.7.2002 but only assumed office on 1.8.2002. [Day35, p.158, lines 1-2]

**Prof Li's aspiration for a full merger among tertiary institutions**

**before he assumed office as SEM**

47. When Prof Li was cross-examined by Mr. Benjamin Yu SC, he said that “one of his visions” was that “Hong Kong should have more than one world-class university”. His view was that “*the fastest possible way*” and “*the quickest way*” was some kind of integration of the universities in existence. [Day34, p.87, line 24 to p.88, line 5]
48. Under cross-examination by Mr. Lee SC, Prof Li accepted that it was his dream that there would be a merger of the educational institutions in Hong Kong and he also wanted there to be world-class universities in Hong Kong. [Day35, p.200, line 15]
49. Prof Li also agreed that by merger, it would have the critical mass. Although the universities could still become world-class without a large number of students, they will take a longer time to be world-class universities. [Day35, p.200, line 24 to p.201, line 25]

**Radio Programme on 30.3.2002**

50. During the time when he was offered by the CE for the position of SEM as set out above, Prof Li, on 30.3.2002, attended a radio programme “清談一點鐘”. [ML-A1/pp.103-1 to103-7]
51. In the radio programme, Prof Li’s keenness on merger was clearly shown. He pointed out that his opinion about higher education was not fully addressed by the Sutherland Report. Prof Li thought that the

Sutherland Report ought to have discussed whether there should still be as many as eight universities in Hong Kong, and whether they should be or may be merged (“合併”). [ML-A1/p.103-2]

52. Prof Li expressed the view that merger could not be realised by negotiation between institutions unless the Government initiated and dictated a policy for them to follow:

“我相信如果真係話要合併嘅呢就好難話兩間大學自己坐埋大家傾嘅，我相信呢個一定要由政府訂落來．．．一定要由政府帶頭。” (emphasis added) [ML-A1/pp.103-4 to 1-3-5]

53. Prof Li elaborated the advantages as follows:

“政府帶頭就變咗我哋一定要我哋係合法嘅機構，我哋一定要聽番政府話，咁所以如果政府嗰個策略係一定唔要八間要五間四間或三間幾多間呢，我哋一定要盡我哋力量去實行呢一方面的工作。” [ML-A1/p.103-5]

54. Prof Li said the Government should consider implementing a merger for the betterment of higher education in Hong Kong and further lamented the lack of discussion of merger in the Sutherland Report:

“．．．政府我相信係想做好教育，尤其係高等教育，咁佢哋應該去考慮．．．呢一個可能性，咁就可惜呢一個報告書入

面就有提及呢一點。” (emphasis added) [ML-A1/p.103-5]

55. Prof Li further opined that a merger would not be successful unless the government left no choice for the parties concerned:

“我哋冇再進一步同朱校長傾談，因為我哋事關覺得嗰個阻力唔係係校長嗰方面係係教職員個方面，所以如果再講落去呢，咁就大家都係．．．做唔到嘢出來．．．咁即係除非上面下令落來你一定要咁做，咁就變我哋有一個選擇性呢，咁我哋自己會做好佢，但係如果有個選擇性，最好唔好做．．．因為事關呢樣嘢係好麻煩嘅事嚟嘅。” (emphasis added)  
[ML-A1/p.103-6]

56. When he was cross-examined by Mr. Yu SC, Prof Li confirmed:

*“What I was saying (in the radio programme) was discussing the Sutherland report. I felt the Sutherland report didn't go far enough and at that point, as a vice-chancellor, I felt it didn't go far enough.”* [Day34, p.89, lines 22-25]

57. When he was further cross-examined by Mr. Lee SC, Prof Li also admitted that:

*“I remember discussing with Lord Sutherland his report of why didn't he put down mergers, why did he stop short of mergers.”*

(emphasis added) [Day35, p.192, line 24 to p.193, line 1]

58. On 31.3.2002, Prof Li's views on merger in the radio programme were widely reported in various newspapers. [ML-A1/pp.98-103]

59. It is submitted that this attitude is wholly consistent with Prof Li's subsequent messages to HKIED about his intention to push for merger, especially those received by Dr Ip a few months later during the lunch on 19.7.2002.

**Interview Report by Hong Kong Economic Times on 17.6.2002**

60. After Prof Li had committed to the then CE that he would take up the post of the SEM, but before the announcement of his appointment, it was reported on 17.6.2002 in the Hong Kong Economic Times that Prof Li reiterated that there were "*too many universities in Hong Kong and merger is the way out*". He expressed a view that if the eight universities had become four, then it would be a good thing. [ML-A3/p.92]

**The Media Tea Party on 4.10.2002**

61. It is Prof Li's evidence that a tea party organised by EMB for him and at least 20 reporters on 4.10.2002. [Day35, p.174, line 18 to p.175, line 2]

62. An instant news report published in the Mingpao Website on 4.10.2002 reported that:

“被問及若教職員不同意會怎做，他表示會「先禮後兵」，且強調最後決定權在政府手裡。李國章表示，希望可凝聚力量，將兩所大學發展為世界級一流的大學，他說：「如你不想做一流大學，難道想成為三、四流大學。」”(emphasis added) [N2/p.41]

63. In news reports published subsequently, the following was reported as having been said by Prof Li:

“李國章早前也曾提出中大可與教院合併，但指教院的教職員對此建議十分抗拒。若其他大學堅持不肯合併，李國章說會「先禮後兵」— 即「先游說，後介入」。他補充說：「若大學決定不合併，他們要給我一個很好的理由…… 我給機會你做一流大學，你卻要做三流大學，這是不行的。」他強調，其他大學亦要重新定位，若繼續辦一些不符合大學使命的學科，政府會削減該校資源。”(emphasis added) [ML-A1/p.114, same report at N2/p.42]

64. A SingTao news article dated 7.10.2002 reported that Prof Li had a deep-rooted idea (“根深柢固”) about merging universities. [MLA3/p.73]

65. When he was cross-examined by Mr. Yu, SC, Prof Li did not dispute that he did say what was reported by the newspapers, including the

use of the phrase 「先禮後兵」. However, he claimed that he was saying it in a joking manner and that it was said in jest and repartee.  
[Day34, p.92, line 8]

66. The assertion by Prof Li during cross-examination that he was just joking was wholly unbelievable.

(1) First, he has never said that he was only joking in his witness statement.

(2) Secondly, in fact, rather than explaining that he was merely joking. In fact, he had rigorously resisted public demand for an apology after he uttered the said “*joke*” on 4.10.2007, as reported in a press article in Sun Daily dated 8.10.2002  
[ML-A3/p.74]

(3) Thirdly, the South China Morning Post dated 12.10.2002 reported that:

*“Reporters were surprised by his determined tone in announcing that he would be the match maker in promoting the merger between the two universities and that the HKIEd should consider joining forces with CUHK.”* (emphasis added) [ML-A3/pp.76-77]

(4) Fourthly, there is no evidence whatsoever showing that he has

made any clarification either in public or in private that he was just joking.

**(II) PROF LI'S DREAM OF A MERGER BETWEEN CUHK AND UST DID NOT MATERIALISE**

67. It is Prof Li's evidence that, at the time of the tea party on 4.10.2002, he felt that it would be a very good idea for HKUST and CUHK to explore a merger. [Day35/199/18 to 19]

68. However, it turned out that the merger, which is Prof Li's dream, did not materialize because of the strong resistance from the staff and students of the two universities, which were widely reported in the media. See various newspaper reports on 7.10.2002, 8.10.2002 and 12.10.2002. [ML-A3/p. 73-77]

69. The vice-chancellor of UST, Prof Chu, also said that he was "surprised" when Prof Li publicly announced his intention for a merger without informing him beforehand. [ML-A3/75]

70. It is submitted that Prof Li would have learned a lesson in 2002 when he discussed his dream of a merger in public. It was therefore necessary for him to change his tactics by trying to get Prof Morris,

and later Dr. Leung, to initiate the merger by employing the carrot and stick approach.

### **(III). PROF LI MADE A PERSONAL OFFER TO PROF MORRIS**

#### **ON 26.6.2002**

71. It is common ground that Prof Li invited Prof Morris to have dinner at Shatin Jockey Club on 26.6.2002 (two days after his appointment as SEM was announced by the Government to start on 1.8.2002). [W1/85, para 14 of Prof Morris's statement dated 23.3.2007] [Day 33, p.22, lines 7-12]

#### **Evidence of Prof Morris**

72. Prof Morris has given very credible evidence on what happened during that dinner. His evidence is consistent with contemporaneous records and in line with the attitude expressed by Prof Li at the time.

73. According to Prof Morris, Prof Li "*took the view that the way forward for the HKIEd was to become a part of CUHK*". He believed that Prof Morris should look much more broadly and openly at the future of the Institute, to see it as incorporating and being the centre of teacher education in Hong Kong and "*being essentially merged within Chinese University*". [Day5, p.37, lines 11-18]

74. Prof Li encouraged Prof Morris basically to think of himself as

leading it, and he made a very strong case for a sort of super-centre of teacher education with Prof Morris heading it. [Day5, p.37, lines 19-21]

75. Prof Morris in his evidence supplemented that “*merger*” in the above discussion refers to a situation where “**two institutions come together and they become one legal entity**”. [Day5, p.38, lines 3-5]

76. Prof Morris’ testimony was supported by a contemporaneous document, namely an email dated 10.7.2002 sent by the PSEM to a Y C Cheng of the EMB. It reads as follows:

*“I have already passed a copy of the paper ‘The Question of a Merger of the HKIEd with a Comprehensive University: An Initial Response’ to SEM. Apparently he has made a **personal offer** to Paul Morris who is now less resistant about a merger in three years. I am not sure what position Simon Ip will take.”* (emphasis added) [EMB5(1)/p.130 or EMB5(2)/p.532]

77. It is submitted that the personal offer referred to in the email was Prof Li’s suggestion made on 26.6.2002 that HKIEd should merge with CUHK and Prof Morris would lead the super-centre of teacher education.

### **Evidence of Prof Li**

78. It was not disputed by Prof Li that such a dinner did take place. However, he gave a totally different version of the event in his

examination-in-chief:

*“Answer: I think [Prof Morris'] his theme, if I remember correctly, was that the education institutions -- the providers, the TEIs, should really come under one roof and that's them, HKIEd being the dominant player, and that way we could move forward.*

*Mr Mok: What was your response to that suggestion or insinuation?*

*Answer: I was in a listening mood, so I wasn't agreeing or disagreeing with the idea, but he felt that there was problems, because he felt that his council was against any form of mergers, as such, if I could use the term merger, because they felt that they should be going it alone and since they are doing well, they don't really need anybody else.” [Day33, p.28, lines 3-16]*

79. Prof Li denied that he had made any offer to Prof Morris, *“I did not make that sort of suggestion to him, nor was it an offer.” [Day34, p.109, line 1]*

80. However, Prof Li alleged that:

*“I think his theme, if I remember correctly, was that the education institutions -- the providers, the TEIs, should really come under one roof and that's them, HKIEd being the dominant player, and that way we could move forward.” [Day33, p.28, line 3]*

81. In respect of the personal offer, he further claimed that:

*“I think the likelihood was because I offer — he was saying he was for a merger, but his council was against it and I said, “Under those circumstances, I’ll be very happy and offer myself to your council and if there’s any stick from you council they will get at me rather than you”. [Day34, p.108, line 5]*

### **Submissions**

82. It is submitted that Prof Li’s evidence was wholly unbelievable and was in contradiction with the documentary evidence.

83. It is also in contradiction with various public statements made by Prof Morris during that period of time. For example, in an interview by Hong Kong Economic Times dated 19.4.2002, Prof Morris was reported to have said:

*“We do not accept a forced ‘marriage’... Merger would bring no advantage to HKIED. It would only divert the mission given to HKIED”* ( “他表明,教院有清楚使命,要為香港培訓有質素教師,合併對教院沒有好處,只會令教院使命轉移,最終資源亦無法直接放到師資培訓上。”) [ML-A3/p.135]

84. In another newspaper report of Apple Daily dated 9.10.2002, Prof Morris was reported to have said that:

*“HKIEd’s mission is unique so that merger may not help fulfilling such mission”* ( “教院使命獨特, 合併或不能達成使命”).

[ML-A3/p.75]

85. It is submitted that Prof Li’s “interpretation” of the phrase “personal offer” was disingenuous. Assuming the “offer” really meant that he offered himself to attend the subsequent HKIEd council meeting, such an offer could not be “*personal*” in nature. Prof Li would have acted in his **official** capacity as the SEM if such offer had ever been made. This is yet another example of how Prof Li would prepare to proffer incredible interpretation of documentary evidence by twist of words.

86. Furthermore, it is Prof Morris’ evidence that after the dinner, HKIEd had a council meeting on 28.6.2002, and at that council meeting, the council discussed for the first time its views on a possible merger in light of the speculation in public as to whether or not the HKIEd would participate in a merger. At the said meeting, the council discussed the matter, considered a paper entitled “*Initial Response to Merger*” [IE-1/p.67], and decided that HKIEd did not see the case for merger and hence were not supporting it, although HKIEd would keep an open mind and consider other forms of integration. [Day5, p.40, line 16 to p.41, line 2]

87. Prof Morris in his oral testimony said that the paper was produced by

himself with the senior management of HKIED [Day11, p.100, lines 5-6]. As the minutes of the meeting at IEEM-1/p.61 show, Prof Morris was the Director of the HKIED at the time. See also Director's report at IEEM-1/p.66 that "*the management has written a paper which considers that possibility and a copy of which is attached at Annex II*", the Annex II referred thereto was the said paper entitled "*Initial Response to Merger*". See also IEEM-1/p.73, an email sent by Sir William Taylor to Prof Morris which confirmed that the said paper was prepared by Prof Morris.

88. It is therefore submitted that Prof Li's contention that Prof Morris was keen on a merger between all teacher education institutions was wholly inconceivable.

#### **The Attempt of Prof Li to put the Blame on Prof Morris**

89. During examination-in-chief, Mr Mok SC sought to "transplant" various statements into Prof Morris's own agenda. [Day33/pp.28-30]

90. First, Prof Li claimed that a statement made in a council meeting represented Prof Morris's wish to take over other TEIs: [Day33, p.29, lines 9-12]

*"The idea put forward by a member was that a merger might mean the Institute taking over other faculties of education, as the Institute in its present form can best serve the needs of the community."* (emphasis added) [IEEM-1/p.65, para. (g)(6)]

91. However, this statement was obviously raised by a member of the council of HKIEd but not Prof Morris.

92. Further, it was impossible that Prof Morris would have suggested taking over other faculties of education. By the time of the dinner on 26.6.2002, Prof Morris himself had already prepared the paper entitled “Initial Response” [IEEM1/p.67], which categorically rejected any discussion of a merger without the involvement of UGC and an objective review [IEEM1/p.70]. This paper was due to be tabled before council the next day, i.e. 27.6.2002. [IEEM1/p.64, para. 11(a)]

93. Similarly, Prof Li claimed that a note of a senior management meeting of HKIEd on 9.10.2002 represented Prof Morris’s wish as expressed during dinner on 26.6.2002: [Day33, p.30, lines7-9]

*“Put forward a bold plan of merging all teacher education programmes, pull them from other universities to HKIEd to form a teacher education university.” [IE-4/p.32, para.2]*

94. However, again, this was not a statement made by Prof Morris. It was only a note inviting members of HKIEd to write articles to the editor of the SCMP. It was just a topic, but not a viewpoint of anyone whatsoever.

**(IV). PROF LI TOLD DR. IP AT THE LUNCH ON 19.7.2002 THAT HKIED WOULD BE “RAPED” IF IT DID NOT AGREE TO**

## **MERGE**

95. There is no dispute that a lunch meeting was held by Dr Ip at the office of Johnson Stokes & Master, a firm of solicitors. The attendees were Dr Ip, Mr. Alfred Chan and Mr Anthony Wu, who were then chairman, vice-chairman and treasurer of HKIED's council respectively, and Prof Li.
96. Both Dr. Ip and Mr. Chan gave consistent accounts of the lunch meeting during which the merger was discussed. [See Day16, p.65, liens 9-21; Day27, p.5, lines 19-22]
97. In fact, Prof Li admitted that he did discuss merger in that lunch. [Day33, p.145, lines 6-17]
98. It is Dr. Ip's evidence that the gist of what was said at the meeting was recorded in an attendance note at E2/p.112. It is Dr. Ip's evidence that the attendance note was a contemporaneous record either prepared on the date of the meeting or within the next few days of the meeting. [Day16, p.62, lines 11-20]
99. Dr Ip testified that he would take a note if there was something important to him. [Day16, p.67, lines1-7]
100. Mr. Alfred Chan agreed in general with the contents of the attendance note when he was shown the note by Dr. Ip. [Day27, p.5, line 6]

101. Dr. Ip confirmed that the attendance note contained what Prof Li said in substance during the meeting [Day16, p.65, line 4].

102. Dr. Ip said that **Prof Li** used the words very close to the ones that he recorded in the attendance note. During the meeting, Prof Li said that **the merger** was going to happen and it was better that the parties co-operated in it. [Day16, p.65, lines 9-10]

*The Account by Dr. Ip*

103. In Dr. Ip's further communication to the Commission by an email dated 30.3.2007, he said that:

*“This clearly mean to me that a decision had already been made and would be implemented if necessary over the objection of the HKIEd. Also, in this context, Professor Li further said words to the effect that if the HKIEd did not give its consent and cooperation to a merger, then it would be **raped**.”* (emphasis added) [W1/p.190-1]

104. When Dr. Ip gave evidence under oath, he stated that:

*“Li said that CH Tung has decided to merge the Chinese U and the HKIEd. He denied it was his own idea and that he was also being pushed by Fanny Law. Tung wants to shows himself as a strong leader and come up with some decisive action.*

*... However, he could not state what good reasons would argue in favour of a merger.”* [Day16, p.63, lines 24 to p.64, line 8]

105. Dr. Ip also confirmed that Prof Li “*said words to the effect that if the HKIEd did not consent or co-operate, then it would be raped*”.  
[Day16, p.65, lines 9-15]
106. It is Dr. Ip’s unequivocal evidence that there was no doubt in his mind as to whether he could possibly have been mistaken as to the use of the word “*rape*” by Prof Li. [Day16, p.160, lines 20-25]
107. As to the reason for using the word “rape”, Dr Ip said that:  
“*[What] I took him to mean was that unless the HKIEd willingly agreed to a merger and took steps towards that end, then a merger would be thrust upon it. It would be made to merge. I think he used the metaphor of rape to reinforce that message he was trying to convey. That was how I took him to mean.*” (emphasis added)  
[Day16, p.65, lines 18-24]
108. Dr. Ip agreed that basically the idea was that you are going to merge whether you like it or not. [Day16, p.65, line 24 to p.66, line 1]
109. It is his evidence that he was inwardly annoyed at what he thought to be a very abrupt announcement of a government decision to merge the HKIEd with another university when he heard Prof Li use the word “rape”. [Day16, p.66, line11 to 67/21]
110. When Dr. Ip was asked whether Prof Li had made clear what he

meant by “merger”, Dr. Ip’s answer was clear and unequivocal:

*‘There was no other term used, it was simply merger. So “merger”, I think everybody understood it to mean for the two to (be)come one. Nobody described what other models we were talking about. So one would assume a merger, you take it at face value; a merger is a merger. Until somebody comes up with perhaps a separate, different definition of what a merger is then one can look at the different permutations. But that didn't occur at that lunch.’* [Day16, p.88, line 5-17]

111. He also said that in his understanding, merger refers to two identities merged into one. [Day16, p.111, lines 11-23]

112. Dr. Ip said in the box that both he and two other council members were surprised by the suddenness of the decision in the discussion after the lunch with Prof Li. According to Dr. Ip, it seemed to them that there had been a decision. It was not presented to them as something that was to be discussed or to be the subject of further consultation. [Day16, p.72, lines 14-22]

#### *The Account by Mr. Alfred Chan*

113. Mr. Alfred Chan, the then Deputy Chairman of the HKIEd’s council, confirmed that shortly after the lunch meeting, Dr. Ip circulated the Attendance Note recording what transpired during the **lunch meeting on 19.7.2002**. [Day27, p.4, lines 7-21] [E2/p.112]

114. At the time, Mr Chan agreed with the contents of the Attendance Note. [Day27, p.4, lines 7-21]

115. When he was asked whether it was the case that Prof Li's view was that the government wished to implement a merger irrespective of the wishes of either establishment, his answer was that "it was actually the intention was there". He said that there was a strong intention to see some re-arrangement of higher educations in Hong Kong and the HKIEd was part of it. The point there was that both HKIEd and also the Chinese University, which was a focus of the topic of that particular lunch, had not made an express wish that they would like to merge. [Day27, p.3, line 22 to p.4, line 6]

116. Mr. Chan also confirmed that Prof Li said the word "rape" in English [Day27, p.8, line 24 to p.9, line 6] and he remembered that because it was a word that stood out. [Day27, p.19, line 19]

117. He said that Prof Li was not in a very joking mood when he used the word "rape." [Day27, p.14, line 25 to p.15, line 1]

### **Prof Li's testimony**

118. Prof Li's evidence in this respect is in direct contradiction with the above two witnesses. Moreover, Prof Li gave a series of inconsistent and contradictory instructions to his counsel. These have irreparably destroyed his credibility and reliability.

119. During cross-examination of Dr. Ip, Counsel for Prof Li, Mr Mok SC, said his instruction was that **the word “rape” was not used and “even if used, it was not something that was important or relevant”**. [Day16, p.153, lines 13-16]

120. However, about 10 days later, during the cross-examination of Mr Alfred Chan, Counsel for Prof Li, Mr Mok SC, said his instruction was that Prof Li himself **had no recollection that that word was being used**. [Day27, p.66, line 25 to p.67, line 1]

121. Having the greatest regard to the professional judgment of Counsel for Prof Li, it is outright impossible that his counsel would misunderstand his instructions. What was equally impossible is that Prof Li’s counsel did not recognise the fundamental difference between the two inconsistent instructions, namely, on the one hand, that the word “rape” was not used and, on the other hand, that Prof Li had no recollection that the word (rape) was being used.

122. The only logical conclusion is that Prof Li changed his instructions at this stage. This is further evidenced by the embarrassment suffered by Counsel for Prof Li, Mr. Mok SC, when he put Prof Li’s changed instruction to Mr. Alfred Chan in the following way:

“Mr Mok: In the light of that, you wouldn't be surprised, would you, that if -- at least it is according to my instruction, that Prof Li himself had no recollection that that word was being used?

“Answer: That I cannot say for Prof Li. I cannot.” [Day27, p.66, line 23 to p.67, line 2]

123. In his examination-in-chief, Prof Li changed his position again by saying that **“I did not use the word ‘rape’”**. [Day33, p.149, line 14]

124. Prof Li went further during cross-examination by Mr Yu, SC by saying that he **could not have said the word “rape”**. [Day34, p.128, line 24 to p.129, line 8]

125. Finally, when cross-examined by Mr. Lee SC, Prof Li insisted that **all of the above versions are correct**. [Day36, p.116, lines 4-5]

126. During his cross-examination, Prof Li said that his lawyers asked him if he used the word “rape” [Day36, p.104, line 8]. He further said that he told his counsel very specifically that he did not use the word “rape” [Day36, p.112, lines 10-11]. This statement, however, was contradictory to his wavering attitude in the box as pointed out above.

127. For the foregoing, the conclusion could only be that Prof Li did use the word “rape”. Prof Li’s constant changes of instructions show that he is not an honest and truthful witness.

128. In fact, the use of the word “rape” is consistent with Prof Li’s keenness on merger in that period of time. In the box, Prof Li said he was “*certainly very keen to put forward the idea for them to consider and that is the idea of merging...I felt that they just shouldn’t sit there and do nothing.*” [Day33, p.147, lines 10-15]

129. Prof Li’s oral testimony clearly shows that he was pushing for full merger in the Niland sense when he reassured Dr Ip that there would not be laying off of academic staff:

*“One of the preconceived ideas I think a number of people had, was that once you merge, you will downsize in order to save money. You will make staff redundant. I was saying, “No, this won’t happen, because **the number of students you have in your merged entity will still be the same, so there will be no reason to lay off any academic staff whatsoever.**” [Day33, p.148, lines 12-19] (emphasis added)*

130. Such reassurance is absolutely unnecessary if Prof Li was pushing for mere co-operation or collaboration in the sense of providing joint programmes. The only reasonable conclusion is that he was pushing for a full merger or at least federation.

131. Prof Li’s evidence is consistent with Dr Ip’s attendance note that if the institutions did not co-operate, full merger would be forced upon them, ie HKIEd would be raped. That is the reason for Prof Li’s saying that “*it’s up to the institution and it’s best for the heads of the*

*institution to get together and talk about this and see if there is an common ground to take anything forward.” [Day33, p.149, lines 1-8]*

### **Retirement - Merger a factor**

132. Dr. Ip decided to retire from the position of council chairman of HKIED on 24.4.2003. He had the intention not to be reappointed after the meeting with Prof Li at the Johnson Stokes & Master office [Day16, p.86, lines 18-20]. In his evidence, he said that the merger was a factor in the decision that he was not to be reappointed. [Day16, p.83, lines 16-19]

133. He said:

*“But since you asked me, the issue of merger, did it have any bearing on my thinking? The answer is yes it did. It wasn't a determining factor, but it was a factor because I could see that the issue of merger was going to be around for quite a while and that it was likely to divert, dilute and dissipate energy and resources which could better be used to upgrade the Institute rather than -- obviously if the decision was made to merge, then a lot of work would have to be done to implement that process. I mean from top to bottom, everybody within the Institute would have to spend a lot of time dealing with that issue. I could not see at the time of April 2003 that the issue would disappear. It was still very much a live issue being discussed and debated. So a lot of work was still being done to meet the demand to merge. So I*

*felt that at that point in time, I had outlived my usefulness.”*

[Day16, p.85, lines 3-20]

**Briefing by Dr. Ip to Prof Morris on the lunch**

134. It is not disputed that Dr. Ip gave a full briefing to Prof Morris regarding the lunch. It is Dr. Ip’s evidence that a full briefing was given to Prof Morris on or before 23.8.2002. [Day16, p.71, lines 5-9]

135. It is Prof Morris’ evidence that he could not remember precisely when he was told by Dr. Ip but he would think it was later than October 2002. [Day10, p.62, lines 10-24]

136. The difference in recollection is to be expected. In fact, it is an indication of honesty. Further, what is most important here, and that is also what Prof Morris does remember very clearly, is what Dr Ip had told him. [Day10, p.62, lines 6-9]

137. It is Prof Morris’ evidence that Dr Ip explained to Prof Morris what had transpired at the lunch with the council officers at his office. Dr Ip told Prof Morris that Prof Li had very strongly stated the need for the Institute to merge. He indicated that the council officers, especially him, had queried what the benefits were precisely. Their view was that they had an open mind but they really need to be convinced by the advantages. Prof Li stated very categorically that it was going to happen, and during the conversation, when the chairman was clearly not endorsing his point of view, he stated that *if*

*the HKIEd did not merge then it would be raped.* [Day5, p.46, lines 14-23]

138. Prof Morris's understanding of "it would be raped" is that this means that **HKIEd** would be made non-viable. [Day5, p.47, lines 1-2]

#### **(V). SUBMISSIONS**

139. It is clear that the conduct of Prof Li amounted to an improper interference with the institutional autonomy. His behaviour is blatant infringement of the independence of the **HKIEd** both in its internal governance as well as administration and its establishment of policies of education.

140. By saying to the Chairman and other Council Officers of the **HKIEd** that "if the **HKIEd** did not give its consent and cooperation to a merger, then it would be raped", Prof Li infringed the "freedom of action" of the **HKIEd** "in managing their affairs". [UA/p.5, para 1.21]

141. It is more culpable for Prof Li to interfere with the institutional autonomy of the **HKIEd** in order to pursuit something which is not a Government policy but was just to fulfil

**his personal dream and agenda.**

**E. SUBMISSIONS IN RESPECT OF THE 1<sup>ST</sup> ALLEGATION**

**(I) THE STATE OF MIND OF PROF LI AT THE TIME WHEN HE MADE THE PHONE CALL ON 21.1.2004**

*Advice Given by SEM and PSEM on the letter dated 20.1.2004*

142. On 20 January 2004, Prof Li personally sent a letter to the Chairman of the UGC setting out the formal advice of the Administration on the planning parameters for 2005/06 to 2007/08. [EMB3/p.243] [Day34, p.138, line 20- p.139, line 6].

143. When Prof Li was cross-examined by Mr Yu SC, he accepted that the Administration's advice contained in his letter "*would have been cleared by Mrs. Law*" as well as himself; and "*the letter contains the Administration's advice which [he] would expect to be reflected in the Start letter*" to be issued by the UGC. [Day34, p.139, lines 3-10]

144. Prof Li also accepted that, in respect of the manpower projection of teacher education, generally speaking, the UGC would "*rely on*" the Administration's advice. [Day34, p. 141, line 8]

145. It is an undisputed fact that the letter dated 20.1.2004 contains **zero place** in the Certificate for Early Childhood Education ("ECE") from 2007/08 and a reduction in the number of Professional

Upgrading Courses (“PUCs”). [EMB3(1)/p.249]

146. When Prof Li was cross-examined by Mr Yu SC, he admitted that he was aware that HKIED was the only institution out of the eight UGC-funded institutions providing UGC-funded ECE and PUC programmes. [Day34, p.141, lines 15-19]

*The First Start Letter dated 21.1.2004* [U2/p.170]

147. During examination-in-chief, Prof Li denied that he had seen the First Start Letter:

*“First of all, I have not seen the Start letter. It is not the usual practice of UGC to send me a draft or the actual Start letter. This is between UGC and the institutions.”* [Day33, p.168, line 9]

148. However, Prof Li’s evidence in this respect is clearly contradicted by the evidence of Mrs. Law when she was cross examined by Mr Yu SC:

*“Question: So before [the Start letter] went out to the Institute, you and the SEM had seen a copy of the letter?”*

*Answer: Yes.”* [Day30, p. 45, lines 7-9]

149. It is submitted that Prof Li must have seen a copy of the First Start Letter before it was sent to the institutions. Moreover, it is submitted that, so far as it affected HKIED, the student numbers

contained in the First Start Letter were in his mind when he made the telephone call on 21.1.2004 to Prof Morris.

### ***The Adjustment of the Student Numbers of Bachelor of***

### ***Education in the Second Start Letter***

150. Further, by 21.1.2004, Prof. Li would also have read the letter from the Chairman of the UGC dated 14.1.2004 requesting him to reduce the allocation of places to teacher education. This letter was copied to Mrs Law. [EMB-3(1)/p.239-242]

151. This letter signalled that the First Start Letter would later be reviewed by the UGC as well as the Administration; and places for teacher education would be further reduced through a second Start Letter.

152. In the email from Mrs. Law to Prof Li, she writes:

*“I refer to the letter from C/UGC to you which has been copied to me. I shall convene a meeting next Tuesday, 20 January, with SG/UGC and my colleagues in the Professional Development and Training Section to sort out the figures. Will report to you after the meeting.”* [EMB3/p.242-1]

153. A meeting was then held between Mrs. Law, Mr. Stone and staff of EMB and UGC on 20.1.2004. According to an email from Ms

Charmaine Wong (of UGC) to Ms Susanna Cheung (of EMB) dated 4 February 2004, the downward adjustment of the student numbers to 700, 700, 700 was decided in principle during that meeting. [EMB-3(2)/p.257-1]

154. It is submitted that Mrs. Law must have reported to Prof Li the decision after the meeting and therefore Prof Li already had an idea of the student numbers which were going to be mentioned in the Second Start Letter.

***Draft Niland Report disclosed on 9.1.2004***

155. According to the minutes of the UGC meeting held on 9.1.2004, Prof Li was briefed on the outcome of the study of several models of integration. [EMB5(1)/pp. 167-1 to 167-4]

156. Prof Li was informed by Prof Niland during that meeting that his working group considered that “*the general issue of merger within the sector and specifically between HKUST and CUHK should not be pursued for the time being*”. Prof Niland also informed Prof Li that the final report would be ready in early March 2004 and “the report would be submitted to Prof Li for consideration by then and it would be up to him to decide how to take the report forward”.

157. When Prof Li was cross-examined by Mr Yu SC, he accepted that at the time of the phone call, he saw that the funding situation

was very bad and that would be “*an opportunity to try to promote the Sutherland report and directing towards a merger or some form of merger for the institution*”. [Day34 p. 153 lines 3-6]

158. It is submitted that given Prof Li’s personal agenda of pursuing a full merger, he would not be satisfied with the expected recommendation in the Niland Report (which would be released in March 2004), namely encouraging institutional integration only to the extent of deep collaboration. It is submitted that the way out for Prof Li was to call up Prof Morris on 21.1.2004 and use the “stick” to coerce him to initiate a merger.

## **(II) THE TELEPHONE CONVERSATION BETWEEN PROF**

### **MORRIS AND PROF LI ON 21.1.2004 (1<sup>ST</sup> ALLEGATION)**

159. It is common ground that there was a telephone conversation between Prof Morris and Prof Li in January 2004 although Prof Li was not able to recall the exact date. [Day 33, p. 166, line 9-11]  
[Day34, p. 138, lines 18-19]

### ***Evidence of Prof Morris***

160. It is Prof Morris’ evidence that he remembered the date of the telephone conversation because it was a distinctive day. It was the start of Chinese New Year holiday and a half-day at work and his

colleagues had to stay behind because they had to work on the translation work of the role differentiation. [Day5, p.66, lines 1-10]

161. Prof Morris gave evidence that:

*“Prof Li phoned me and told me that he had just seen a copy of the Start letter. The gist of the conversation was that 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; 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 a Institute or an entity within Chinese U which would be the centre for teacher.”* [Day5, p.66, line 14 to p. 67 line 2]

### **The Bad News**

162. It is Prof Morris’ evidence that Prof Li didn’t elaborate what the bad news was, but *“the indications were that there were going to be very large cuts in the student numbers”*. [Day5, p.67, lines 7-10]

163. According to Prof Morris, Prof Li said he was not responsible for the reduction in student number. He did not say who was responsible but by implication it was Mrs. Law. [Day5, p.67, line 20 to p.68, line 13]

## **Viable**

164. Prof Morris' understanding was that "*the Institute would be made unviable unless he agreed to merge it.*" If he agreed to merge, then "the situation would have been far more positive".
165. Prof Morris also gave evidence that, for example, "*the cutbacks in the student numbers would have been less*" and "*the IEd might have been treated more positively*". [Day5, p.70, line 17 to p. 71, line 3]
166. During cross-examination, Prof Morris was adamant that the statement made by Prof Li was clear and "*was consistent with all his conversation with Prof Li*" that "*the IEd was not going to be viable unless it agreed to a merger*". [Day8, p.143, lines 17-20]
167. He said that the clear message he got was that there was very bad news coming for the Institute. "*The only way he could help me was if we merged.*" [Day8, p. 144, lines 13-21] [Day8, p. 145, lines 12-19]
168. Prof Morris' evidence was that "*... if you want this process of cuts to stop, to be reversed, then you need to agree to merge.*" [Day10, p.123, lines 22-24]
169. Prof Morris accepted in the box that he did not remember specifically whether Prof Li used the word "*viable*" but "*if you want to stay afloat*" was the basic sentiment of "*viable*". [Day8, p.145,

lines 20-25]

### **Radical**

170. It is Prof Li's evidence that the gist of the phone call was that "*if you don't do anything radical then you would not be saved from the cuts*" (emphasis added) [Day8, p.139, lines 5-11]

171. Prof Morris disagreed with the proposition put to him by Mr Mok SC that, when Prof Li referred to something radical which ought to be done by the HKIEd, what Prof Li was conveying to Prof Morris was really a full range of possible activities, including different types of merger that could take place between the HKIEd and other institutions. It is Prof Morris' evidence that the impression which Prof Li gave him was "**a full merger**". [Day9, p. 77, line 20 to p.78, line 5]

172. It is incredible to suggest that a full range of integration possibilities was what Prof. Li was referring to when he said he wanted something "*radical*". Clearly, affiliation and deep collaboration do not constitute radical lines of action.

### **Merger**

173. According to Prof Morris, even though Prof Li did not use the words "*full merger*" and "*Chung Chi Model*" in the phone conversation, he was very clear about what he meant by merger because he had referred to the Chung Chi Model more than once on

prior occasions and, in the meeting of February 2004, Prof Li also spoke about the cost saving benefits of a merger -- especially in terms of registry, student affairs, library and so on -- which clearly indicate that he was moving onto a very strong conception of merger. [Day9, p. 79, line 1-10] See also [Day9, p. 24, lines 4-11]

### **The Restructuring and Collaboration Fund**

174. It is Prof Morris' cogent evidence that there was no reference to the restructuring collaboration fund. [Day9, p. 82, lines 11-13]

### ***Evidence of Prof Luk***

175. The evidence given by Prof Luk is wholly consistent with the evidence of Prof Morris.

176. It is the undisputed evidence of Prof Luk that the telephone conversation took place on 21.1.2004, which was Lunar New Year's Eve. At that time, he was sitting in Prof Morris's office, the President's office of HKIEd, as he often had. They were talking about various institutional matters such as the imminent retirement of Prof Chan Wing Ming, the Dean of Languages, some of his efforts to raise money for Chinese studies and so on. [Day12, p.7, line 13 to p. 8, line 2]

177. Prof Morris's telephone rang, and his secretary, Ms Doreen Cheng, knocked on the door and said it was a call from Prof Li. Prof Morris then went to his desk to pick up the phone. Prof Luk therefore

offered to leave the room but Prof Morris indicated to him that there was no need for him to do so. Prof Morris supposed that was because he did not expect the call to last for very long and he wanted their conversation about the affairs of the Institute to continue. So Prof Luk stayed in the room and remained seated on the sofa. The distance between them was about 10, 15 feet. [Day12, p. 8, lines 4-25]

178. It is also the undisputed evidence of Prof Luk that the telephone conversation lasted about 15 to 20 minutes. Prof Luk recalled that Prof Morris did not get to say very much. It seemed to be a rather one-sided conversation, with the person on the other side of the telephone line doing most of the talking. It is Prof Luk's evidence that the conversation had something to do with the status of the Institute, something to do with the future of the Institute and Prof Morris did not look very happy with what he heard. [Day12 p. 9 line 25 to p. 10 line 4]

179. It is also not disputed that at the end of the call, Prof Morris came back to the sofa, sat down and told Prof Luk the gist of what had been discussed in the call. [Day12 p. 10 lines 6-8]

180. Prof Luk testified as to the content of the telephone conversation as follows:-

*“Which was that Prof Arthur Li, the Secretary for Education and Manpower, started by saying to Prof Morris how they were old friends. I think the phrase that Prof Morris said he had used*

was, 'We go back a long time', something like that. And then how Prof Li always had Prof Morris's interest at heart and that he had some advice to offer, namely that, as we all knew, the Start letter of the UGC triennium planning cycle was about to be issued and Prof Li said to Prof Morris that he had seen the Start letter and that the student numbers were going to look very bad for HKIEd. But then he could offer some help. The help that he could offer was that if Prof Morris would do something radical about the status, about the future of HKIEd, then maybe he could do something to ameliorate the student numbers. Otherwise, he would allow the Permanent Secretary, Mrs Fanny Law to cut away at the student numbers as was already indicated in the Start letter or maybe worse."

"Mr Lee: To cut away or cut down?"

Answer: Cut down, that's right. Reduce."

[Day12 p. 10 line 10 to p.11 line 3]

[See also Day12 p. 130 line 21 to p. 132 line 5]

181. It is also Prof Luk's evidence that:

"I think he also said, 'You know, I'm your only friend in EMB. The EMB is against you. Fanny Law is against you. And therefore those cuts would come unless I help you.' Things to that effect. That's the impression I got. I don't know what the exact wording." [Day12, p.131, lines 8-12]

182. According to Prof Luk, the things that Prof Morris tried to repeat verbatim were that:

*“Arthur told me, ‘We are old friends, we go back a long way, Paul.’”* [Day12, p.132, lines 4 to 8]

*“I am your only friend. I won’t let Fanny and EMB cut your numbers if you would do certain things.”* [Day12, p. 132 lines 14-18]

### **Chung Chi Model**

183. Prof Luk also recalls that the Chung Chi model was mentioned:

*“Well, Prof Morris said that Prof Li mentioned something like the Chung Chi College model with the Chinese University of Hong Kong. The impression that Prof Morris got from the telephone call was that Prof Li had wanted him to take the initiative to bring the Hong Kong Institute of Education into the Chinese University of Hong Kong under what Prof Li called the Chung Chi model.”* [Day12 p. 11 lines 12-19]

184. According to Prof Luk:

*“to bring the Hong Kong Institute of Education into the Chinese University of Hong Kong”* means *“to make it a part of Chinese University of Hong Kong”*. [Day12, p. 11. line 22]

## **Merger**

185. It is Prof Luk's evidence that he could not remember specifically whether or not the word "merger" was used by Prof Morris when he reported that telephone conversation to him. But Prof Luk understood the Chung Chi model to be a merger. It is because after Chung Chi College became a part of the corporate body of the CUHK, it was "essentially a group of halls of residence with limited pedagogical functions". [Day12, p. 11, line 24 to p. 14 line 9]

## **Funding Cut**

186. According to Prof Luk, subsequent events were consistent with what was told by Prof Morris to him at the end of the telephone conversation. [Day12 p. 14 lines 10-19]

## ***Evidence of Prof Phil Moore***

187. The evidence of Prof Morris is further supported by the testimony of Prof Moore, who is a fairly independent witness.

188. It is Prof Moore's evidence that:

*"This telephone call in the earlier part of 2004, reportedly to Prof Morris from Prof Li, talking about a merger and if there were not a merger, there would be cuts."* [Day23, p. 152, lines 17-20]

189. Prof Moore testified that his recollection of what Prof Morris

told him was something like, “*Arthur has been on the phone to me. If we don't merge, there will be cuts.*” [Day23, p. 154, lines 4 to 6]

190. Prof Moore's reaction was that he was rather disturbed and he told Prof Morris that he was offended by someone who is in a public position speaking like that. [Day23, p. 154, lines 19-20]

191. When Prof Moore was questioned by Mr Yu SC, he said that he was “very, very confident” that the words used were “*Arthur*”, “*merger*” and “*cuts.*” [Day23, p.155, lines 17-18]

192. It is Prof Moore testimony that his interpretation was that “*there was a causal relationship between mergers and cuts*”. [Day23, p.156, lines 5-6]

### ***Evidence of Prof Li***

193. Prof Li's testified that:

*“I think I told him that the funding situation would be very bad, not just in the current year, but in subsequent years, that were going through an austerity period. Government has very little money, the HKIEd will be in a worse-off position because of the various things we have mentioned like front-end loading and so on and so forth. You really have to seriously think about HKIEd's future and what to do and there is money, \$200 million of restructuring funds at the UGC. So he should think about*

*that. It was just friendly advice. It wasn't anything in particular that you must do this, but, you know, come on, you know, you've got to get moving.*" [Day34 p. 151 lines 8-20]

194. Prof Li said he was not sure what is the Chung Chi Model [Day 33, p.220 line 10] and he did not agree that the Chung Chi model was mentioned in the telephone conversation. [Day 33, p. 220 line 25 to p. 221 line 3]

### **Case of Prof Morris is Credible**

195. It is submitted that Prof Morris's and Prof Luk's recollection of the content of the telephone conversation were substantially the same.

196. Although they may have a different recollection of the wording used, their evidence is consistent in respect of the salient points, for instance:

(a) "*The Institute had no friends except him*" [Evidence of Prof Morris, Day5, p.66, line 17] *cf* "*Prof Arthur Li... started by saying to Prof Morris how they were old friends... .*" "*I'm your only friend in EMB*" [Evidence of Prof Luk, Day12, p.131, lines 8-9];

(b) "*The Start letter was very bad news for the Institute*" [Evidence of Prof Morris, Day5, p.66, line 16] *cf* "*he had seen the Start letter and that the student numbers were going to look very bad for*

*HKIEd.*” [Evidence of Prof Luk, Day12, p.10, lines 18-20];

(c)“... *he wanted to – portrayed himself as wanting to help*” [Evidence of Prof Morris, Day5, p.66, lines 19-20]] *cf* “*But then he could offer some help*” [Evidence of Prof Luk, Day12, p.10, lines 20-21]

(d)“... *there was a very strong ‘anti’ feeling towards the IEd*” [Evidence of Prof Morris, Day5, p.66, lines 17-18] *cf* “*The EMB is against you*” [Evidence of Prof Luk, Day12, p.131, line 9]

(e)“*the only way to address this significant problem... was for the IEd to merge with Chinese U*” [Evidence of Prof Morris, Day5, p.66, lines 20-23] *cf* “... *if Prof Morris would do something radical about the status, about the future of HKIEd*” [Evidence of Prof Luk, Day12, p.10, lines 22-25]

197. It is natural that Prof Morris and Prof Luk’s accounts of the phone call contain minor discrepancies. When two or more witnesses honestly recollect events that happened years ago (particularly without any contemporaneous record), there are bound to be discrepancies or even serious discrepancies.

198. On the other hand, when two or more witnesses are able to give an account of the same incident that happened years ago without any discrepancies in the absence of any contemporaneous record, the

tribunal must view that with suspicion. The more perfect the match, the greater the suspicion should be.

199. It is noted that Prof Luk stated in his examination-in-chief that Prof Li also said: “Otherwise, he (Prof Li) would allow the Permanent Secretary, Mrs. Law to cut away (down) the student numbers as was already indicated in the start letter or may be worse”. [Day12, p.10, line 25 to p.11, line 3]

200. Although Prof Morris did not give evidence on this particular aspect, there is nothing surprising if Prof Luk remembered what Prof Morris told him while Prof Morris may have forgotten about it. After all, Prof Luk is a historian. In fact, Prof Morris conceded that Prof Luk’s memory is probably better than his. [Day12, p.20, lines 21-23]

### **Submissions**

201. **Again, the behaviour of Prof Li constituted an improper interference with the institutional autonomy of the HKIED.**

202. **By threatening Prof Morris that HKIED would not be viable “unless it agreed to a merger”, Prof Li infringed upon the independence of the HKIED in its internal governance and administration.**

203. **Prof Li’s behaviour is more reprehensible when he, in his capacity as the SEM, told Prof Morris that, “if you want this**

**process of cuts to stop, to be reversed, then you need to agree to merge.” It was clearly intermeddling with the internal affairs of the HKIEd.**

**204. The conduct of the SEM became totally out of line when he frightened Prof Morris by saying that he would allow the PSEM, Mrs. Law, to cut away (down) the student numbers of the HKIEd.**

## **F. SUBMISSION IN RESPECT OF UNFAIR TREATMENT**

### **(I). STUDENT NUMBERS**

#### *Introduction*

205. Prof Morris' evidence that:

*“Subsequently, 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 EMB in LegCo in January 2005. These cuts were conveyed to us by the UGC, who always stated that they were based on the advice of EMB or the Administration. 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 28.2.2006.” [W1/p.95, para. 37 of Paul Morris’ witness statement dated 23.3.2007]*

206. Mr. Michael Stone stated in his evidence that, if the SEM wanted to create difficulty for the HKIEd in relation to students numbers, he would be able to exercise maximum power or influence in those areas where the HKIEd was either the sole provider or the main provider. These areas are:-

- (1) primary places where the HKIEd is the main provider;
- (2) sub-degree programme for early childhood education where

the HKIEd is the sole provider; and

(3) arts and music programme where the HKIEd is the sole provider, and physical education programme where CUHK and HKIEd are the only providers. [Day21, p.21, line 8 to p.22, line 6]

207. In Dr. Lai Kwok Chan's testimony, he gave his account of the meaning of "unviable" in relation to students numbers:

*"Commissioner Lee: From your point of view, what would be the minimum number of student places, then the Institute would become unviable?"*

*A. I don't think it would be useful to have a figure, because a tutorial centre can survive with only 300 students. So it depends on the way it is operated, whether it is really operating as a UGC-funded institution, with levels that are comparable to university education that is received in the other seven institutions. So the question of viability I would say rests with the whole -- whether the Institute could continue to attract quality staff, quality students, when the scenario, if it unfortunately became something really like a death with a thousand cuts, these cuts would amplify because any other quality academics outside would see that this is a dwindling institution, not favoured by the Government, with any new developments are rejected. Then even I think before a so-called threshold number it would no longer be a viable higher education institution at a level playing*

*field with any other Hong Kong universities.*” (emphasis added)  
[Day20, p.153, line 9 to p.154, line 5]

208. It is submitted that, subsequent to the telephone call made by Prof Li as referred to in the first allegation, significant reductions in student numbers in the above-mentioned three “pillars” of the HKIEd were made. These reductions were irrational and unjustified. It did not only affect the development of the HKIEd. Borrowing Dr. Lai’s phrase, from the eyes of academics outside, the HKIEd may be seen as an institution not favoured by the Government and one which had to struggle to remain viable at a level playing field with any other Hong Kong universities.

**Reduction in Bachelor of Education (Primary) Programme FYFD places [ML-B/p.46]**

209. According to Dr. Lai, the HKIEd was a major provider of primary school teachers because they prepared more than 80 per cent of Hong Kong’s primary school teachers. On the other hand, they were a minor provider of secondary school teacher education and prepared only 25 per cent of Hong Kong’s secondary school teachers.  
[Day19, p. 26, lines 14 to p.27 line 11]

210. In the “unprecedented” second start letter [Day19, p. 26, lines 9 to 13], there was a reduction in primary school numbers and an increase in secondary school numbers, on which Dr. Lai testified that the change would disadvantage the HKIEd. [Day19, p. 27, lines 14 to

19]

211. According to Dr. Lai, although HKIEd was granted an increase of 68 FYFD places for the Bachelor of Education (Primary) programme (from 251 in 2004/05 to 319 in 2007/08), it had a **significant cut of 128 FYFDs** for its two secondary programmes (i.e. Bachelor of Education (Secondary): a reduction from 94 to 50; and the Bachelor of Education (Languages): a reduction from 148 to 64). The cut was slightly compensated by 35 FYFDs for its new collaborative programmes. **In total, the Institute had a reduction of 25 FYFD places** (from 493 in 2004/05 to 468 in each year from 2005 to 2008) and emerged as **the only institution which had to suffer a cut in FYFD places**. [W1/p.199 para. 18] See also the table at [E2/p.131]

212. Furthermore, **all the cuts in FYFDs for secondary teacher education in the 2005/08 triennium were exclusively from the HKIEd** [W1/p.199 para. 20]. It is also notable that in the 2004/05 roll-over year, the reduction in primary school numbers was applied pro-rata to all teacher education providers concerned. This established practice of pro-rata increase or decrease had ceased to exist in the allocation of places for the 2005-08 triennium. [W1/p.196 para. 9]

213. Dr. Lai disagreed that the reason for increasing the secondary school numbers and reducing the primary school numbers was a fine

tuning of planning. His viewpoint was supported by the fact that there was a large reduction of primary teacher education places and the forecast by the administration which was done in the beginning of January was that there was a significant demand for primary school teachers. [Day19 p. 28 lines 7 to 18]

214. It was also Dr. Lai's evidence that,

*"Q: The question I want to ask you to focus on is: have you seen from the materials that you have seen any rational basis for the change between the first and the second Start letter in reducing the primary number and increasing the secondary number?"*

*A. Mr Yu, I do not see as rational at all if we are really talking about manpower requirements."* (emphasis added)

[Day19, p. 31, lines 16 to p. 32 line 4]

*"I think between the first and second Start letters, there must have been a process going on in EMB and UGC to decide to massively cut the primary teacher education places and to keep or actually increase the 20 places for secondary. As I said, I do not see that as a rational decision, that was not based on manpower requirements and the outcome was a kind of a very convenient kind of half and half and then at the end, I think the outcome is that not only the Institute had been given the opportunity that it had seen in the first Start letter, the Institute did get some increases in primary teacher education places, compared with 2004/05, but all these numbers have come from a massive, I*

*would use the word "all", all these numbers have come, the reduction in the Institute's secondary teacher education places"*  
(emphasis added) [Day19, p.32, lines 10 to 25]

215. Dr. Lai also testified that in respect of the process of deleting the student numbers from the Institute's existing programmes, the Administration has set the parameters which he thought would have led to the biggest impact on the Institute. [Day19, p. 35, line 8 to p. 36 line 5]

### **Zero number in Certificate in Early Childhood Education**

**(Sub-degree) [ML-B/20]**

216. In the first Start Letter dated 21.1.2004, the number of places for the part-time Certificate programme in Early Childhood Education (ECE) was to be reduced from 369 for the intake in 2004-05 to 200 in each intake of 2005-06 and 2006-07, and down to 0 in 2007-08.

217. It was Dr. Lai's evidence that the Institute was totally astonished to find that the allocation became zero because there was a very significant demand by early childhood teachers for upgrading themselves to the certificate level [Day19, p. 59, lines 9 to 19]. The 200 places were subsequently reinstated in March 2004 after the strong objections from the early childhood sector.

218. Different explanations have been given by EMB officials during the inquiry. Ms. Susanna Cheung said that she still did not know the reason why the number became zero [Day25, p.14, lines 5 to 6], while Mr. Sheridan Lee admitted in his witness statement dated 28.5.2007 that it was due to his oversight and misinterpretation [W2/304, paras. 8 to 10 of Sheridan Lee's witness statement]. Mrs. Law claimed that the problem was first known to her as an incomplete projection and then later known to be miscommunication [Day30, p. 46, lines 10 to 19].

219. Nevertheless, it was Mrs. Law's evidence that she did see the First Start Letter before it was issued [Day30, p. 45, lines 7 to 9]. She stated that, since *"the policy target has been met, that would be the situation. It is not as eye catching [in the start letter] as we look at it now retrospectively when there was a complaint."* [Day30, p. 45 line 24 to p. 46 line 3]

220. It is submitted that given Mrs. Law's hand-on working style, an abrupt cessation of a course would surely catch Mrs. Law's attention. It is submitted that the reduction of the programmes to zero was consciously endorsed by Mrs. Law.

### Introducing Tendering

221. It was Dr. Lai's evidence that the EMB had subsequently used the savings retrieved from the cessation of the Institute's in-service

ECE programmes to fund tendered programmes for the certificate of early childhood education. [W1/p.201, para.25]

222. In his testimony, Dr. Lai pointed out the unreasonableness of this measure:

*“... but the case is that if you have given an institution its core mission to prepare early childhood teachers and by taking out its core business for tendering, it's a very, I would say that's a very kind of drastic action which will have affected the development of the Institute. This is not the peripheral business of an institution. According to the UGC's statement, this is our core business.”* [Day19, p. 66, lines 1 to 8]

223. In an internal email from Mrs. Law to Yvonne Ng of EMB dated 17.3.2004, which was copied to Mr. Michael Stone, it was written:

*“I have spoken to SEM. He is adamant that we should clarify the picture today on both teacher education and early childhood education. He fully agreed that we should use the balance of funds (468:200 places) to finance **another** training provider.”*  
[EMB3/318]

224. According to the testimony of Dr. Leung, he received a telephone call from Mrs. Law in late March/early April 2004 telling him that the Government had decided to invite tenders for some early childhood programmes and places. [Day26, p. 26, line 21 to p.27, line 7]

225. During Prof Li's cross-examination, he admitted that he did make a decision in 2004 that the money was put out for introducing the system of tender and that the decision did not have any policy paper and consultation. [Day35, p. 72, line 10 to p.18]

226. It is submitted that, in the circumstances, Prof Li's decision to introduce competition to the provision of early childhood education, which was the core business of HKIEd, should be viewed with the greatest suspicion. Taking into account the proximity of time after the telephone call under the first allegation was made, and having regard to Prof Li's ambition to push forward a merger, it is submitted that the sudden change in policy on early childhood education which affected the HKIEd adversely constituted the thousand cuts that were inflicted on the HKIEd for not moving towards a merger.

Exclusion from EMB meeting on early childhood teacher education

227. It is not disputed that HKIEd was not invited to the meeting on 20.5.2006. The meeting was recorded by an internal email from Ms. Charmaine Wong to Mr. Michael Stone. It stated that:

*"SG*

*This is to report to you the key points of discussion raised at the meeting with PSEM on 20.5.2006. Only representative of the education faculties of HKU and CUHK and social science faculty of PolyU were invited. (HKIEd and HKBU were not invited deliberately.*

*Before going into details, she stressed on the **strict confidentiality** of the discussion....*

*PSEM solicited assistance from CUHK, HKU and PolyU (despite UGC's call for role differentiation) to develop early childhood programmes....*

*When asked by a TEI why HKIEd was not invited, she said frankly that **she had doubts on the quality of pre-primary education programmes currently provided by HKIEd***

...

*She was very **negative** on HKIEd.” (emphasis added) [E3/p.276]*

228. Subsequent to the meeting, a request was made by Mrs. Law to UGC to relax the role differentiation requirement of Polytechnic University so that it was able to provide programmes on early childhood education. The UGC eventually acceded to the request “*somewhat reluctantly*”. [EMB8/p. 199 to 203]

229. Having considered:

- (1) Mrs. Law's negative attitude towards the HKIEd as evidenced by the email;
- (2) The unusual move to relax a role differentiation requirement; and
- (3) The disregard of HKIEd's track record in providing early children education programmes,

it is submitted that it was another move taken by the EMB to cause the HKIEd to lose its strength in the early childhood area and to

make the HKIEd more “unviable” as a result.

**Decision to close down Bachelor of Education degree programmes in Arts, Music and Physical Education in 2008/09 roll-over year**

230. It is Prof Morris’ evidence that the HKIEd was informed by UGC, who were acting on the EMB’s instructions, to stop the intake for their Bachelor of Education (Secondary) course for teachers of Art, Music and PE in the roll-over year 2008-09. The rationale given for that decision was that, in the year of **2012** only, there would be a projected surplus of secondary school teachers and Art, Music and PE are not “core” subjects [W1/p.95 para. 37]. It was only after the commencement of the Inquiry that UGC agreed, by a letter dated 23.4.2007 from Mr. Michael Stone to Prof Morris, to move 40 places from the three core KLAs of Chinese, English and Mathematics to Arts/Music Education and PE. [ML-A2/609]

**(II). UNIVERSITY TITLE**

231. It is submitted that the EMB had adopted double standards in considering whether to award university title to the HKIEd.

232. According to a Legislative Council paper prepared by the EMB entitled “*Proposal on Retitling of the Hong Kong Institute of*

*Education as a University*” in March 2007, a list of criteria were set out:

*“In considering applications from any institution for retitling as a university, the Government will consider the merits of each case, the blueprint for future development and take into account various relevant factors including the objectives of establishing the university, the quality and standard of the institution’s academic and research programmes; the range of programmes; the effectiveness of its teaching and learning; the institution’s internal governance structure; the quality of leadership of its management; the financial position of the institution; its sustainability; and the public interest, etc.”* [ML-A3/p.103, para. 6]

233. However, in the case of other tertiary institutions, there were only three criteria, namely: acceptance by the Institution of the principle and terms of a differentiation of roles among UGC-funded institutions; acceptance and implementation of a common basis of funding as applied to other UGC-funded universities; and attainment of self-accreditation status [ML-A3/95]. See also [ML-A3/94 to 94].

234. In a meeting of the Legislative Council Panel on Education on 22.3.2007, some LegCo members expressed their concern about EMB’s imposition of additional criteria on the HKIEd for the award of university title:

“68. .... Mr. LEE Cheuk-yan also considered it unfair to change

*the criteria for the award of a university title in the case of HKIEd.*

71. *Ms Audrey EU considered it unreasonable to impose additional criteria for considering HKIEd's application for retitling as a university... .” [ML-A3/126 to 127]*

235. Furthermore, the mere mention of university title for the HKIEd would easily offend Prof Li as is evidenced by the telephone conversation on 16.11.2005 between Prof Li and Prof Morris in which the former stated:

*“Now, if you want me to I shall be very happy to set up an immediate committee to look into the future, the whole future of HKIEd as of now and this committee will study every aspect, it will take a year to study where the future of HKIEd should be, whether it should be a university or whether it should be merger with another university, whether it should be disbanded altogether.” (emphasis added) [ML-A1.164-9]*

*“Would you like me to set up a committee now to look into the future, a government committee? A high-powered Government committee to look into the future of HKIEd?” [ML-A1.164-14]*

### **(III). SUBMISSIONS**

236. In conclusion, since Prof Morris did not accede to Prof Li's request for a merger with the CUHK and in particular, after the telephone call relating to the first allegation, the HKIEd was

disadvantaged and targeted by the EMB in a number of areas such as the reduction in student numbers. It is submitted that all these instances of unfair and unfavourable treatment imposed upon the HKIED were carried out by Prof Li and Mrs. Law with the aim of fulfilling the curse that HKIED would become unviable.

## **G. DR. THOMAS LEUNG AS AN AGENT FOR PROF LI TO PUSH FOR A MERGER**

### **(I). PROF MORRIS' CASE**

237. It was Prof Morris' evidence that, from about the time when the HKIED started to confront the EMB one budget cuts in the 2005/2008 triennium, Prof Li and he had little direct communication. However, Dr. Leung actively sought to bring about a merger between HKIED and CUHK. Prof Morris said: “[Dr. Leung] was, in my view, acting as *an agent* for Professor Arthur Li”[W1/p.105 para. 62]

238. Prof Morris testified that “*the arguments (of Dr Leung) were the same as Professor Arthur Li's and the goal was to get me to initiate it. My failure to do so resulted in my non-appointment as President.*” [W1/p.105 para. 62]

239. It was Prof Morris' evidence that in about 2006, Dr. Leung told him that he agreed to accept reappointment as the chairman of the HKIED Council for only one year and that **the task given to him by Prof Li was to implement the merger of the HKIED with CUHK.**

[W1/p.105 para. 63]

240. This is supported by Prof Phil Moore's evidence that:

*"Question: The chairman of the council kicked off the retreat, did he not?"*

*Answer: He certainly did.*

*Question: What sort of impression did you form as to his preference or otherwise for merger in the full Niland sense?"*

*Answer: My understanding and I think that of many other people who were there on that day, was that there was a very strong pressure for a merger.*

*Question: Why do you use the word "pressure"?"*

*Answer: I have known Thomas Leung for quite some time and he and I have worked well together on a number of different committees and I respect him for the work that he's tried to do. I somehow or other get the feel – and this is just my own intuition -- that he's the messenger for something else.*

*Question: The messenger for whom?"*

*Answer: For merger. Prof Li."*[Day23, p.166 lines 6 to 23]

241. It was also Ms Katherine Ma's evidence that: "*I shared with the President my observation of the Chairman often being torn between two minds: his conscience and the task given to him to push for a merger which was not welcomed.*" [W1/289 para.54]

## (II) DR. THOMAS LEUNG IS NOT A CREDIBLE WITNESS

242. It is submitted that Dr. Leung is not a credible witness. His evidence was internally inconsistent, and was also at variance with other witnesses and documentary evidence. He also demonstrated that his personal views were often in conflict with the Council's decisions. He failed to inform the Council of a number of meetings or exchanges he had with senior government officials.

### The Beas River Retreat: Why was it Organized?

243. Dr. Leung claimed that: "*following the release of the Niland Report by the UGC, Prof. Morris and I agreed that the Institute should have a full day retreat to brainstorm and obtain some consensus on the way forward regarding institutional integration.*" [W1-/p.62, para. 29]

244. The Niland Report was published in late March 2004. The retreat

was organized long before this.

245. He later changed his justification for having the retreat by arguing that:

*“In March, Prof. Morris and Prof. Bernard Luk had already engaged Chinese University on collaboration and merger quite intensively at that time. I wasn’t involved in those discussions but I was aware that they were engaging in it. And Prof. Morris actually wrote me an email updating me on their progress. So what I told Prof. Morris, I said, ‘Look Paul, before we get any further into this, we need to get people together to talk about it so that we all know, we all have consensus about what we are negotiating, what are the rules, what are the boundaries, what are the outcomes that we would find acceptable or not acceptable?’ That’s what I told Prof. Morris.”* [Day 25, p.139, line 21-p.140, line 8]

246. He went on to claim that:

*“We must have an open process where we talk about this before things go too far”.* [Day 25, p.141, line 7-9]

247. This laudable motive for the retreat was not referred to in any of his witness statements because it was untrue and was but a crude attempt by Dr Leung to put himself in a good light while painting a negative image of Prof. Morris.

248. The plan to hold the retreat was first stated by him at the Council meeting on 26.2.2004, which was three weeks before the meeting between Prof. Bernard Luk and Prof. Kenneth Young of CUHK. The minutes recorded that:

*“the Chairman proposed that a whole day retreat be organized, preferably in April 2004 for all Council members as well as Deans and some staff and student representatives to discuss openly and thoroughly the Institute’s priorities and direction of development”.* [IEEM1/p. 121-1, para. 9]

249. The discussions with CUHK were not intensive. There was only one initial meeting on integration between Prof. Luk and Prof. Young on 15.3.2004 which was reported by Prof. Morris in his email to Dr. Leung on 16.3.2004 [E2/269/270]. The earlier meetings in March were held with staff of the Faculties of Education of HKU and CUHK on issues that had emerged as a result of the Start Letter [E2/p.269 para. 2].

250. Accordingly, Dr. Leung’s avowed motives for organizing the retreat were wholly inconsistent with the facts. He initiated the retreat prior to the publication of the Niland Report and prior to any discussions with CUHK.

251. It is worth noting that Dr. Leung decided to hold the retreat three days after his meeting with Prof. Arthur Li on 23.2.2004. Prof. Morris stated in his witness statement that, at that meeting: *“Prof.*

*Arthur Li reiterated that HKIEd should merge with CUHK”*  
[W1-p.90]

(III). DR. LEUNG PROMOTED THE MERGER DURING THE  
BEAS RIVER RETREAT: DEATH BY THOUSANDS CUT

252. Dr. Leung claimed that he did not promote the merger at the Retreat, but merely wanted to get everyone to think out of the box. He argued:

*“In my opening address, I emphasized the need for open-mindedness and also for ‘out-of-the-box thinking’.*  
[W2-p.73, para. 3]

*“There is nothing I said which remotely relates to pushing for merger. In fact what I said was not to think about merger.”*  
[Day 26, p.33, line 25-p.34, line 2]

253. He also said that he used the phrase *“death by a thousand cuts”* to *“paraphrase the likely scenario as the unfavourable demographics would result in funding cuts”*. [W1-p.62, para. 31]

254. This is wholly contrary to the testimony of a number of witnesses.

255. Mrs. Angela Cheung stated in her evidence:

*“What he meant was that if we did not listen to EMB or to the Government on their way of thinking about the IEd, the merger and so on, the HKIEd would not be able to survive and it would be a painful death.” [Day 23, p.130, line 17-21].*

*“Q: Are you able to articulate why is it that you got that impression from what the chairman said at the retreat, that he was going really for the merger with the Chinese university?”*

*A: Because it has been the talk among the staff and the council members in the IEd for some time and even in the meeting with Prof Arthur Li, at that council meeting, in 2002, there was somehow the idea that it would be a merger with the Chinese University.*

*Q: “What was it that he said or did at the council retreat that gave you that impression?”*

*A: “He actually mentioned it at the introductory remarks. He gave a very long introduction and he took around about one and a half hours, I think.*

*Q: “You get the sense of that from his remarks?”*

*A: “Yes, I got the sense of it.*

*Q: "That's why you were asking him why he was swinging?"*

*A: "Yes, I was prompted by his introductory remarks?" [Day 23, p.146, line 13-p.147, line 6]*

256. Ms. Katherine Ma stated:

*"The very important part which really made my memory very vivid was that when Dr. Leung went on about his model thinking, Mrs. Angela Cheung stood up, for me in quite an abrupt manner to say, 'Chairman, why are we switching from no merger to considering merger?' Then the discussion went on with a few staff going around and focusing on why considering merger. So I would imagine that the meeting became a little bit, as it turned out, unexpected by the participants, of a certain focus on merger discussion." [Day 18, p.133, line 10-19]*

*"I also recorded, he said, 'Why I change my mind'. And he went on explaining the situation or the challenges that made him change his mind. That's why he repeated twice, 'Why I change my mind'." [Day 18, p.91, line 18-21]*

257. In his evidence, Prof David Grossman stated:

*"There is no doubt in my mind that the death by a thousand cuts was associated with if we do not merge. ....What he was talking about here was **merge or die**." (emphasis added) [Day 17, p.62,*

line 8-10, 15-16]

258. As for Prof Phil Moore, he testified that:

*“My understanding and I think that many other people who were there on that day, was that there was a very strong pressure for a merger.”* [Day 23, p.166, line 12-14]

259. Mr. Leung Yan Wing stated in his witness statement as follows:

*“Dr. Thomas Leung had said at the beginning of the retreat that if Hong Kong Institute of Education did not merge with other university, it would face ‘death by a thousand cuts’.* [W2-102]

260. Mr. Pang Yiu Kai stated in his witness statement that:

*“I recall him using the expression ‘death by a thousand cuts’ on the occasion to set the scene that if HKIEd were to maintain the status quo (i.e. do nothing), it would ‘die a death by a thousand cuts’ in light of the demographics, the changes in the society, **the government’s stance on institutional integrations**”.* (emphasis added) [W1-215]

261. He drew a connection between the government’s stance on institutional integrations and the cuts that were going to be made on HKIEd.

262. The credibility of these witnesses is enhanced by the fact that, although they used different ways to express themselves, all of them

conveyed the same message, namely that **Dr. Leung promoted a merger as the only way to avoid a slow and painful death.**

(IV). THE SECRET MEETINGS WITH PROF LI AND OTHERS

263. Dr. Leung failed to provide an adequate explanation as to what had been discussed at the following meetings which occurred both before and after the two retreats held respectively on 24.4.2004 and 5.6.2004:

- (1) 16.3.2004 – breakfast meeting with Prof. Arthur Li [E3/p.194]
- (2) 22.3.2004 – breakfast meeting with Mr. Michael Stone [E3/p.195]
- (3) 23.3.2004 – breakfast meeting with Mrs. Fanny Law, Mr. Cheng Man Yiu and Mr. Tai Hay Lap [E3/p.195]
- (4) 6.4.2004 – lunch with Dr. Edgar Cheng [E3/p.196]
- (5) 13.5.2004 – lunch with Prof. Arthur Li [E3/p.201]
- (6) 4.6.2004 – meeting with Mr. Michael Stone [E3.p205]
- (7) 18.6.2004 – meeting with Prof. Arthur Li [E3/p.207]

264. **We submit that these meetings must have been held in order to discuss how to facilitate a merger and to report back on the lack of progress at the retreats.**

265. However, Dr. Leung sought to describe the topics discussed at those meetings as follows:

*“it’s just very short kind of chitchat, sort of thing. You know, we*

*do share other interests, other than HKIEd. In fact, the discussion relating to the HKIEd and Chinese U is not really the main subject of discussion for most of my interaction with Mr. Edgar Cheng.” [Day 28, p.94. line 17-22]*

*“I think those meetings with Arthur Li would have been updating each other on the subjects of discussions that have been linking up, you know, like deep collaboration, federation arrangements, what is, you know, the discussion with Chinese U that was happening and so on and so forth. It would generally be that kind of an updating.” [Day 28, p.95, line 5-11]*

*“(with Michael Stone) I think we would generally be talking about Institute of Education affairs.” [Day 28, p.98, line 8-9]*

266. These explanations were wholly unconvincing, especially in relation to their timing. Moreover, as Dr. Leung stated, he was not close socially to Prof Li. It is also notable that the purpose and outcome of these meetings were not reported to the Council or the Senior Management.

**(V). GRADUATION CEREMONY: COUNCIL CHAIRMAN WOULD NOT RULE OUT THE POSSIBILITY OF HKIED MERGING WITH ANOTHER INSTITUTION**

267. At the Graduation Ceremony, Ms Katherine Ma was completely

taken by surprise when she heard Dr. Leung told the press that “*there were different ways to achieve university title and merger was one of the means*”. He further said that *he would not rule out the possibility of HKIEd merging with another institution*. [Katherine Ma’s statement, W1/p.285, para. 33]

268. Before the Graduation Ceremony on 18.11.2005, Ms Katherine Ma briefed the Council Chairman, to be ready when confronted by the press. Dr Leung said that he would say that “*his position was that HKIEd has accomplished a lot and has matured to a stage ready for university title.*” [W1/p.285, para. 31]

269. Ms. Ma alerted Dr Leung while driving in her car about the possible bad press arising from his comments and advised him to issue a press statement to clarify the matter and contain the damage. He refused and said that “*he did not see any need of doing so*”. [W1/p.286, para. 35]

270. The explanation he gave in the witness box was that:

*“we can’t explain this rationally. I answered a very smart reporter question with a very silly answer. I knew when I answered that I gave the wrong answer, to be honest. I knew there was a problem because this is going to be a story, but I couldn’t take it back.”* [Day 26, p.37, line 20-24]

*“But I think it was that kind of psychology; I was a bit*

*self-defensive, I was angry with myself. Ms. Ma was bugging me, in a nice way, I'm not saying she did it wrong or bad but she kept on bugging me. So I just had that reaction, 'Let's wait and maybe it will go away'.* [Day 26, p.38, line 14-19]

271. Ms. Ma was just doing her job and did nothing wrong in advising Dr. Leung from the stance of a professional. In contrast, Dr. Leung's answer to the media was inconsistent with the council resolution "*against a merger*".

272. He said that he had given a "*silly*" answer, but he turned down the suggestion to do a correction. He waited for two weeks before finally holding a press briefing to clarify the Council's stance on merger.

273. **It is submitted that he did not sit on the matter because he was "*silly*" or "*psychologically self-defensive*" or whatever, but he consciously wanted to support the merger.**

#### **(VI). THE 17.4.2006 DINNER AT HONG KONG CLUB**

274. Dr. Leung claimed that the dinner was organised to discuss matters relating to "deep collaboration". He stated that "*this dinner was to follow up on discussions of deep collaboration between the Institute and CUHK*" [W1-p.69, para. 58]. This is similar to the statements made by Mr. Michael Stone, Mrs. Alice Lam, Prof. Lawrence Lau and Prof. Kenneth Young. They also claimed that a

merger was not discussed and that a result of the dinner was a joint letter from HKIEd/CUHK concerning deep collaboration [W1/p.207]. Prof. Lau also alleged that “*it was really to brief the SEM as to the progress made on deep collaboration*” [Day 24, p.7, line 25-p.8, line 1].

275. Dr Leung further explained with reference to the dinner:

*“There was no mentioning about a merger in terms of a takeover situation, not at all. That was not discussed at all. So the whole dinner was talking about different issues under a federation model that we need to resolve.”* [Day 27, p.128, line 21-25]

276. This was directly contradicted by Prof. Morris who said that “*Prof. Li initiated this dinner and was adamant that HKIEd would need to merge if it was to survive... Dr. Thomas Leung supported Professor Arthur Li’s viewpoint*” [W1/p.110, para. 73(iv)]. Prof Morris testified that:

*“Prof Li started by saying the IEd would not be **viable** unless it agreed to a **merger**. I protested as best I could to the effect that I thought I had been brought to this meal to discuss a federal arrangement; that didn't seem to be on the agenda; and I rehearsed the reasons for my concern about a merger.”* (emphasis added) [Day5, p.129, lines 7-12]

*“Dr Leung supported Prof Li.”* [Day5, p.133, line 11]

*“Dr Leung made some interjections to sort of reinforce the inevitability of a merger.” [Day5, p.133, lines 23-25]*

277. Subsequently, the documents provided to the Commission of Inquiry confirmed the accuracy of Prof. Morris’ account of the dinner. A briefing note from SEM to the CE stated that:

*“during the discussion, it was made clear to HKIEd that the status quo was not an option and that some form of **merger** was the only way to guarantee a **viable** future for HKIEd in the long term. Both SEM and UGC Chairman were prepared to be flexible about the roadmap and the final arrangements, subject to an agreed endpoint of a **merger**”.* (emphasis added) [EMB5/p. 450]

The credibility issues of all the attendees of the Hong Kong Club

dinner

278. This would suggest that all parties to that dinner, other than Prof. Morris, had, for one reason or another, sought to misrepresent what actually happened.

279. Subsequently, Dr. Alice Lam and Mr. Michael Stone confirmed that the briefing notes were an accurate record of what was discussed.

[Day 22, p.94-97, Day 23, p.98, line 2-7]

280. Although initially, Dr. Alice Lam did not admit that she had seen the briefing note, the evidence indicates the opposite. The exchange of handwritten notes between Mr. Stone and Dr. Lam stated that:

*“Dear Alice, Pls note the above. I better run my draft brief past you – given the political sensitivity. Michael”*

*“Noted and wait for your draft brief. Alice”*

[U8/p.225]

281. It is also evident that the final version of that briefing note, following amendments by SEM, was sent to the Secretary General of UGC.

282. Subsequent to the emergence of the “briefing note”, Prof. Kenneth Young stated that, in contrast to his witness statement, they did discuss a “tight federation model” in which only one Council existed. Similarly, Prof. Li stated that the question of “one Council or two Councils” and “one Senate or two Senates” was discussed. It is difficult to envisage how such a discussion could take place without reference to the term “merger”. It would be akin to talking about an object with four wheels, an engine and gearbox, without mentioning the term “car”.

283. Although all these witnesses, other than Prof. Morris, denied that “merger” was discussed at the dinner, their testimony and documentary evidence speak for themselves and show how

unbelievable they are, so these witnesses are not credible.

284. By contrast, Prof Morris has proved himself to be both honest and reliable, bearing in mind that he was the first to give evidence, and without the benefit of timely discovery of those material documents including the briefing note to the CE.

**(VII). THE “HEART-TO-HEART” TALK - DR. LEUNG PROMOTED A MERGER**

285. At the discussion with local Staff Council members after the Council meeting on 28.9.2006, Dr. Leung referred to Prof. Morris and Prof. Luk as having “personality problems” and “as being obstacles to the Institute’s further development”. [Day18, p. 148, lines 1 to 6]

286. He denied that he had promoted a merger during this conversation. His evidence is contrary to that of the other witnesses who were present.

287. Ms. Katherine Ma testified that:

*“He keep on saying, ‘The need to be strategic’. He said, ‘Must change or else we can’t survive. We must be very strategic and think big’. ..... Then he said, ‘For changes, there are many, many options. Why can’t we think about merger? We can think of merger as, you know, a matter of long-term option’. He actually gives some details about the fact – concerning, you know, detailed arrangement. .... He said, “For details concerning the*

*campus, the certificate of completion, the identity, things can be sorted out. They are details. The important thing is to be strategic.” [Day 18, p.148, line 10-23]*

288. Dr. Lai Kwok Chan gave the following evidence with regard to the same discussion:

*“He told that Prof. Arthur Li talked to him about this and being the longstanding and strongest player in early childhood education, he felt very disappointed that the HKIEd was being excluded out from that process. He said that Prof. Arthur Li had waited several days for the Institute to come up with some big proposal, but he had waited for a few days and now he had to distribute the money and HKIEd was not part of it.” [Day 19, p.11, line 3-10]*

*“So Prof. Thomas Leung then moved to talk about ways of collaboration. He did not use exactly the word ‘collaboration’, but ways of further deeper collaboration with the Chinese University of Hong Kong. He talked about possibilities, for example, of the Institute. I did not recall he used exactly the word ‘merging’, but what he suggested, for example, **we could become part of Chinese U, but the Faculty of Education of Chinese U could be moved to the Tai Po campus of the HKIEd and the HKIEd staff could get involved in teaching research postgraduate students.**” (emphasis added) [Day 19, p.12, lines 2-12]*

289. In his witness statement, Dr. Leung Yan Wing portrayed a similar picture:

*“He expressed his opinions that merging with CUHK is a means of further development and he further elaborated the details of his understanding of merging with CUHK.”* (emphasis added)

[W2-103]

290. Furthermore, in the minutes of the Council meeting held on 1.12.2006, when the members were discussing the “Heart-to-Heart” talk, it was written: *“also HEARD the Chairman advise that he had mentioned in the said conversation that the **Government wanted a merger** because in its view it was best for the community.... ”* (emphasis added) [IEEM-2/p.125, para. 47]

291. Clearly, Dr. Leung’s testimony is not reliable. He was certainly promoting a merger in the “Heart-to-Heart” talk.

292. The above also reflects negatively on Dr. Leung in respect of his evidence on the meeting with Prof Li and Dr. Edgar Cheng on 6.6.2006. Dr. Leung said in his letter dated 4.5.2007 to the Commission of Inquiry that:

*“He and Dr. Edgar Cheng initiated a short meeting with the SEM which took place on 6<sup>th</sup> June 2006. This meeting lasted for approximately 15 to 20 minutes, and its purpose was to inform the SEM that they could not take things forward (after*

*the dinner on 17<sup>th</sup> April 2006)*". [W2-75-1]

293. This raises the question why he still talked about a merger in September 2006 if he had indeed told the SEM that discussions were put on hold after 17.4.2006 dinner. Another question is why this was not reported to the Council. His credibility has become suspect.

**(VIII). DR. LEUNG'S DISCUSSIONS WITH EMB ON MERGER**

294. There is ample documentary evidence to show that Dr. Leung must have discussed the question of merger with the Administration on different occasions.

295. In October 2003, after a lunch between Dr. Leung, Mr. Alfred Chan, Prof Li and Mrs. Law, the following email from Mrs Law says that:

*"Dr. Leung envisaged the need to reduce academic staff at a later stage, after the VR and CR schemes for non-academic staff are completed. The manpower planning for academic staff will hinge on the future role and priorities of the HKIEd. In this connection, HKIEd would like to have **an early indication of the plan to merge HKIEd with CUHK** – how this is to be done and what would be the division of responsibility between the future Institute of Education with CUHK and the existing Education Faculty of CUHK."* (emphasis added) [EMB/p.162]

296. Dr. Leung claimed that:

*"There was no plan to merge CUHK with HKIEd. It was too*

*early. All the discussions at that time were very exploratory.”*

[Day 25, p.136, line 22-25]

297. In the record of his meeting with the CE on 4.8.2006, it was stated:

*“Dr. Leung said that he had been in discussion with CUHK and EMB on the proposed **merger** for some time. HKIEd had no in-principle problem with the proposal so long as the institute would continue to enjoy a high level of autonomy and retain its own identity. However, CUHK was of the view that after the merger, the Council of HKIEd should be subsumed under the Council of CUHK. CUHK also did not accept the name of HKIEd to appear on future graduates’ certificates. Furthermore, the staff faculties should remain separated until the **full merger** was completed. These were the areas which HKIEd had difficulties to accept.”* (emphasis added) [EMB/p.452]

298. To suggest that the CE did not understand the difference between the terms “merger”, “federation” and “full merger” is disingenuous. As Mr. Michael Stone noted:

*“I would say that by this stage, in August 2006, I should think that the CE understood the difference between merger and federation, for example”.* [Day 22, p.93, line 9-12]

299. From the above, it would be safe to assume that Mr. Stone as Secretary General of UGC also understood the difference between the terms “merger” and “federation” and thus his briefing notes were

an accurate record of the discussion at the dinner on 17.4.2006.

300. Further, Dr. Leung himself stated at the Council meeting on 1.12.2006 that:

*“We (he and Prof. Morris) actually exchange views from time to time on the future direction of the Institute, deep collaboration, working better with external stakeholders, the stance of the government for the merger, how we actually could further develop the organization.”* (emphasis added) [ML-A1/p.251]

**(IX). HKIED AND CUHK: EXPLORATORY DISCUSSIONS**

301. Dr. Leung has repeatedly claimed that Prof. Luk and his colleagues had no authorization to discuss with CUHK in late 2006 matters relating to federation. He stated that:

*“I was surprised to hear that, I think, because number one I didn’t think that they would have the authority to start talking about this sort of thing.”* [Day 32, p.7, line 8-11]

302. The Council records clearly stated that:

*“The Council affirms that further exploration of the feasibility, desirability and form of deep collaboration with other local tertiary institution(s) was to be carried out within the parameters as set out in para. 7(a) and 7(b) of the paper.”* [IEEM2/p.6 para. 12(d)]

*“7(a) institutional integration under the affiliation/federation*

*model was worth exploring*” [IEEM2/p. 12, para. 7(a)(i)]

*“The Chairman clarify his stance as follows: (vii) it was worth exploring the experiences of the federal system in some universities overseas”*. [ML-A2/p. 412, para. 13(i)(vii)]

303. There is no record of the Council’s suspension or rescission of its position, and Dr. Leung never informed Prof. Morris or the Council that discussions with CUHK had been suspended.

304. The Deep Collaboration Agreement, endorsed by the Council, supports the need to further pursue the collaboration with CUHK. Clearly, there was an expectation that the two parties would continue to explore possibilities.

305. Dr. Leung’s own testimony confirms that he expected the Senior Management to talk to CUHK. He stated that, on 23.3.2006, Prof. Morris said:

*“These are two things we want, and if we can get those two things I am willing to talk a federation arrangement”*.

306. Dr. Leung’s response was:

*“Fine, if you want to do this, let’s start talking about this, let’s get the right people together and talk about it. I said, ‘I’m not sure they would give you the Faculty of Education, to be honest Paul, but you can try. That was my reaction to it.”* [Day 26,

p.43, line 2-10]

307. His claim that he, as Council Chairman, did not require the approval of the Council to explore federation and that he, as Council Chairman, would have authority to talk to the other side on the Columbia model [Day 32, p.18, lines 14-22] is not consistent with the HKIEO which states that:

*“The Council of the Institute shall have general control over the administration of the Institute and the conduct of its affairs; and on behalf of the Institute, may exercise any of the powers conferred and shall perform all the duties imposed by law on the Institute.” [s.7(b), HKIEO, Cap.444]*

308. The provision clearly states that it is the Council that has the control and power. There is no clause in the Ordinance which provides that the Council Chairman has such control and power as alleged by Dr. Leung.

#### **(X). DR. LEUNG AS COUNCIL CHAIRMAN**

309. Dr. Leung frequently stated during his evidence that he was unhappy with the development of the Institute and with the performance of the Senior Management. He stated that: *“we have been drifting for several years, ever since Prof. Morris took on as president”*. [Day 32, p.52, line 9-10]

310. However, as a member of the Council for 14 years and as Chairman

since 2003, he had never raise this matter with anyone. One must ask this rhetorical question: did he fail to address his concerns in the exercise of his public duty.

311. It should also be noted that he was Chairman of the Council when the Council unanimously endorsed the HKIED's Strategic Plan 2006-2012 at its meeting on 22.2.2006. [ML-A3/p.1][IEEM2/p.82]

312. He has singularly failed to inform the Council of the outcome of the numerous discussions he has had with EMB, UGC and CUHK about matters relating to integration.

313. On his final day of testimony, the inconsistency of Dr. Leung was brought into full view. While, over three days in the witness box, he argued vigorously for the need for HKIED to keep its autonomy and not to merge, on the last day of his evidence, he did a *volte-face* and revealed his personal views. When asked if a merger might be in the public interest, he answered:

*"I must say that at the end of the day we are really looking at it from a narrower perspective. .... We put on this institutional hat, we're concerned about our identity and so on and so forth, but in all those discussions and thinking and so on, the public interest is really little bit being put on the back of our minds."* [Day 32, p.139, line 23-24-p.140, line 1-5]

314. Clearly, if his personal perspective is in conflict with that of the

Council, he should have raised the matter formally with the Council in order that it would reconsider its position.

315. In addition, it emerged that in 2003, Prof. Morris clearly informed Dr. Leung that he was under pressure from Mrs. Law to sack staff. However, Dr. Leung failed to respond to this information [Day32, p. 38, line 17] despite acknowledging that, other than the email, Prof. Morris had often complained about the behaviour of senior government officials.

#### **(XI). AN ENGINEERED REAPPOINTMENT PROCESS TO REMOVE PROF MORRIS**

316. It has emerged in the Commission of Inquiry that Dr. Leung, in his capacity of Council Chairman, had engineered the review process for the reappointment of the President to ensure the non-reappointment of Prof Morris.

317. An Ad Hoc Review Committee was established in April 2006 by the Council. It did not meet until 21.11.2006. It is submitted that during this period, Dr. Leung was trying to persuade Prof. Morris to either support the merger or not seek reappointment. On 10.6.2006 he informed Prof. Morris that if he was not willing to merge the Institute, he would not be reappointed. [Day5/p.125, lines 21 to p.126 line 19]

318. When this failed, he overturned the Council's decision on the role and membership of the Ad Hoc Review Committee to ensure that two staff members were not able to participate. There is no record of the Council having approved that decision. Further, in testimony, Dr. Leung revealed his true motive when he stated that:

*"Prof. Grossman is a Dean of the Institute of Education, a very senior management position. He's also known to be a very close colleague of Prof. Morris."* [Day 28, p.172, line 6-8]

319. Clearly, whilst the Ad Hoc Review Committee had the power to determine the procedure for reviewing the work of the President, it was not given the power to exclude any of the members appointed by the Council to the Ad Hoc Review Committee from participating in the Committee.

320. Subsequently, Dr. Leung organized a review exercise in a way that enabled him to influence the views of the participants. This intent had already been signaled to some staff at the "Heart-to-Heart" talk on 28.9.2006.

321. Ms. Bella Lo stated in her witness statement that:

*"The session started with the Council Chairman expressing his views and observations of the President."* [W1/p.308]

322. Prof. Louisa Lam also stated in her witness statement that:

*“At the meeting, the Council Chairman began by declaring it was not about the merger of the Institute, and that issue should be set aside. He then proceeded to express his views about the performance of the President. ... Whenever I tried to interject my views, he would brush them aside. ... In the process, he also chastised me for being among the 18 senior academic staff who had signed the letter to Council Officers dated 11 October 2006 about the presidential review process.” [W2/p.56]*

323. The initial report of Prof. Morris’ performance was manifestly designed to sow the seeds of divisiveness between local and expatriate staff, and between junior and senior staff. [IEEM2/p.268 at p.270 to 272]

## **(XII). SUBMISSION**

324. In conclusion, it is submitted that Dr. Leung was not a credible and reliable witness. Despite his protestations to the contrary, the testimony of other witnesses and the contemporaneous documents clearly showed that he had been constantly promoting a merger as the future of HKIED. Given the Council’s decision of on non-merger and the position of the Senior Management, the only inference that can be drawn is that he was an agent of Prof Li in initiating a merger involving the HKIED.

## **H. SUBMISSION IN RESPECT OF THE 3<sup>rd</sup> ALLEGATION**

### **(I). THE BACKGROUND OF THE 3<sup>RD</sup> ALLEGATION**

325. It is common ground that there was a long-standing agreement between the then Education Department (now the EMB) and the Professional Teachers' Union ("PTU") that the Education Department would make special provision for teachers made redundant by the closing down of classes or schools. In 2003 and 2004, this took the form of the Priority Appointment Period ("PAP"), namely, the EMB would issue a ban to all school principals to prohibit the signing of contracts with freshly graduated teachers until a particular date in the year, so that redundant teachers would enjoy priority of appointment. In 2003, the PAP was not lifted until 10 August 2003. [Day12, p.22, lines 9-22] [EMB 7/p.302]

326. The PAP for 2004 was set by the EMB to last until 30.6.2004. [Day34, p.65, line 6]

327. This effectively meant that only the redundant teachers (surplus teachers) would only be able to sign contracts before that day. [Day12, p.22, lines 19 to 22]

328. In autumn 2003, a HKIEd graduate filed a complaint with the Ombudsman against the arrangements of the PAP [EMB-7/p.214]. After investigation, in May 2004, the Ombudsman issued a report to

the effect that the PAP system was not reasonable because it affected adversely the job opportunities of freshly graduated teachers and suggested that the arrangements for surplus teachers be re-examined. [Day12, p. 23, lines 8 to 17] [EMB7/p.282-289]

329. In response to that, EMB set the date for the PAP to end on **30.6.2004**. [Day12, p. 23, lines 17 to 19]

330. According to the uncontradicted evidence of the Hon. Mr. Cheung Man Kwong (the Chairman of PTU and Legislative Council member), there were still 300 odd surplus teachers who were not able to find new teaching posts on 15.6.2004. [W2/p.292, para. 2 of the statement of the Hon. Mr. Cheung Man Kwong dated 22.5.2007]

331. It is common ground that on 26.6.2006, the PTU held a 12-hour sit-in demonstration to urge the Government to extend the PAP period for surplus teachers. The action was widely reported in the media including:

(1) the editorial published in the Oriental Daily News dated 27.6.2004 entitled: “教師超額缺對策 政府短視添民怨”; [N3/p.116]

(2) the news report published in the Ta Kung Pao entitled “超額教師瀕失業人心惶惶 四百同業請願爭取維持續約三年” dated 27.6.2004; and [N3/p.118]

(3) the news report published in the Oriental Daily News dated 28.6.2004 entitled “逾 300 準教師料失業”. [N3/p.119]

332. On 27.6.2004, the then Deputy Secretary for Education and Manpower of EMB, Mr. Cheng Yan-chee published an article on the EMB website entitled “「情理路」上的徘徊” which stated that the PAP would disadvantage the employment prospects of HKIED’s graduates. [EMB7/p.302]

333. The contents of the article were reported in the Wen Wei Bao dated 28.6.2004 entitled “超師優先聘用期縮短”. [N3/p.121]

334. It is the undisputed and uncontradicted evidence of the Hon. Mr. Cheung Man Kwong that the publication of the article by the EMB was an intentional attempt by the Government to create conflict between surplus teachers and HKIED graduates. [W2/p.292, para. 4 of the statement of the Hon. Mr. Cheung Man Kwong dated 22.5.2007]

## **(II). THERE WAS AN IMPASSE ON 29.6.2004**

335. It is common ground that a meeting was held between the EMB and PTU at 6:00 p.m. on 28.6.2004, that is, two days before the PAP had been set to end, to discuss the issue of surplus teachers. There were about 10 attendees including Prof Li, Mr. Cheng Yan-chee, the

Hon. Mr. Cheung Man Kwong and the representatives of EMB and PTU. [EMB7/p.304]

336. It is also common ground that in the meeting, the two sides agreed on a number of issues, most notably the provision by EMB of additional places for early retirement, so that more job opportunities could be created for both redundant and new teachers. However, Prof Li was not prepared to extend the PAP. On the other hand, the Hon. Mr. Cheung Man Kwong demanded that the PAP be extended until the number of unemployed surplus teachers was significantly reduced. The PTU also expressed the view that the 2 remaining days of the PAP would not be adequate for the early retirement scheme offered by EMB to take effect. [EMB-7/p.304]

337. According to the Hon. Mr. Cheung Man Kwong, “最後李國章拒絕延長超額教師優先聘用期，談判不歡而散”。The PTU therefore decided to urge the teachers to take to the street on 1.7.2004 and carry out a hunger strike on 3.7.2004. [W2/p.292, para. 5 of the statement of the Hon. Mr. Cheung Man Kwong dated 22.5.2007]

338. Prof Li alleged several times that the PAP problem “had been resolved” by 29.6.2004. When Prof Li was cross-examined by Mr. Yu SC, the following questions and answers were recorded:

*“Mr Yu: The difficulty which you were facing, you at the time, in terms of political pressure, was these teachers coming out on a*

*hunger strike, being stirred up by the PTU?*

*Answer: I wasn't particularly perturbed by these political shenanigans, because these are shows.*

*Mr Yu: Yes.*

*Answer: You know, it's an election year, so they have to have some issue to hang on to attack or to solidify their power base, or whatever, so this is it. As far as the surplus teachers were concerned, I was very confident that we had resolved the problem. I was very confident that there was not a problem there.*

*Mr Yu: You're not telling this Commission that people going on hunger strike, you take just as a show?*

*Answer: They are trying to send a message. But here I have, to the best of my abilities, resolved that problem. So the problem doesn't really, to my mind, exist and yet they persist on having a hunger strike. Now, if there was continuing problem that we could not resolve, then obviously a hunger strike is a very, very serious thing. But when there is no problem and you still come out and put on a demonstration or whatever, then to me that is not that serious.*

*Mr Yu: Although you would be telling us that during closed door meetings you were very cordial with Cheung Man Kwong, You were actually quite annoyed and upset and angry with the action that they were taking: is that right?*

*Answer: No, I wasn't annoyed. I was very surprised. In fact, I asked him, "Why are you doing this? I thought we settled the matter." And his reply to me was, "This is election year. What do you expect?" So I laughed. That's part of politics.*

*Mr Yu: Reading on –*

*Answer: Could I just say, Mr Yu, if we had not been able to resolved the problem, if our relationship during this period of time was that bad and they come out on hunger strike and I ignore them and unsympathetic, do you think, certainly I don't think Cheung Man Kwong would write a letter and thank me for resolving the problem of surplus teachers." (emphasis added)  
[Day34, p.173, line 24 to p.175, line 14]*

339. It is submitted that the evidence of Prof Li is wholly unbelievable and should be rejected for the following reasons:-

- (1) Prof Li's evidence is in direct contradiction with the evidence of the Hon. Mr. Cheung Man Kwong;
- (2) Prof Luk's evidence is also supported by the

contemporaneous email records of Mr Ng Shun Wing;  
[W2/36-39]

- (3) Prof Li's evidence is in direct contradiction with the evidence of the Hon. Mr. Cheung Man Kwong, who is a wholly independent witness in the present Inquiry. According to the Hon. Mr. Cheung Man Kwong: “2004年6月15日至2004年7月24日，是教協會與教統會關係最惡劣的時刻，當中的關鍵是6月28日與李國章談判破裂。” [W2/292, para. 1]
- (4) The PTU's urging the teachers to march on the street on 1.7.2004 and calling for a hunger strike starting on 3.7.2004 were the actions in response to and as a result of the breakdown of the negotiation between the SEM and PTU on 28.6.2004. These actions showed clearly that the tension between EMB and the PTU was intensifying and their difference was far from being resolved.
- (5) A press release dated 29.6.2004 issued by the PTU clearly showed that “是次談判整體未能成功．．．最關鍵問題包括特設代課及超額教師的轉職聘用期，並未能有一致協議。” “當前，超額教師聘任毫無進展，情況惡劣，已到達危急關頭”，“教協會與教統局的會談進展並不成功，在最關鍵的轉職聘用期

更是失敗” (emphasis added”) [EMB7/p.306 to 7]”

- (6) Such a confrontation between the PTU and the government was the situation that the CE wanted to avoid. During that meeting on 29.6.2004, the CE expressed his concern by saying “*It would be better to delay [ending the PAP] for a few days after 1 July in order not to simulate the emotion of the surplus teachers*” [EMB7/308-1];
- (7) In the meeting with the CE on 29.6.2004, Prof Li never informed the CE that the problem of surplus teachers “had been resolved”. Nor did Prof Li mention the opinion of the Ombudsman to the CE. Rather, the following reasons justifying his advice to the CE against extending the PAP even by 10 days revealed his negativity towards surplus teachers:
- (a) “*There was pressure from HKIEd*”;
  - (b) “*The Administration should not yield to pressure from surplus teachers’ hunger strike*”; and
  - (c) “*By allowing schools to start open recruitment again after 1 July, it would put pressure on surplus teachers to consider taking voluntary retirement*”. [EMB7/308-1]
- (8) Prof. Li’s mishandling of the PAP issue made things worse for all sides. His recalcitrance aggravated the situation after 1.7.2004, by which time the Hon. Mr. Cheung Man Kwong found that he

had to appeal to the CE to intervene, according to the letter he sent to the Commission dated 22.5.2007. In a press statement entitled “*CE concerned about surplus teachers*” issued by the Government dated 3.7.2004, it writes,

*“In response to media enquires, a spokesman for the Chief Executive’s Office today (July 3) confirmed that the Chief Executive, Mr. Tung Chee Hwa, had received the Hong Kong Professional Teachers’ Union’s (PTU) letter requesting him to meet with the Union to discuss the issue of surplus teachers. ‘The Chief Executive is very concerned about the subject and he asked the Secretary for Education and Manpower to continue to look into it **seriously** and to discuss it with all concerned parties including the PTU, so as to formulate a fair, reasonable and sustainable **solution** to the problem,’ the spokesman said.”* (emphasis added)  
[W2/pp.294-295]

- (9) In a meeting with the CE dated 22.7.2004, Prof Li admitted that the problem of surplus teachers had not been resolved. In that meeting, Prof Li actually put forward further measures to address the problem of surplus teachers:

*“In response to CE’s question, SEM said that there were now more vacancies than the number of surplus teachers. **EMB had encouraged schools with vacancies to interview those surplus teachers. For those surplus teachers who could not***

*find a job, they would be pooled together and made available as relief teachers. They would be paid according to the actual amount of work performed...*" (emphasis added)  
[EMB-7/p.333-1]

340. At 4:59 p.m. of 29.6.2004 (that is, the material day of the Third Allegation), a copy of the press release issued by PTU urging surplus teachers to take to the street on 1.7.2004 and start a hunger strike on 3.7.2004 was faxed to "*EMB Roger*" at "25757050" by the Oriental Daily News [EMB7/306].

341. Under cross-examination by Mr Martin Lee SC, Prof Li admitted that Roger was one of his press officers [Day 36, p. 147, line 13]. Prof Li also accepted that normally Roger would bring a document like the press release to his attention. [Day 36, p. 147, line 19-23]

### **Submission**

342. It is crystal clear that at the time when the telephone conversation took place between Prof Luk and Prof Li in the evening on 29.6.2004, the problem of surplus teachers was still **unresolved**. On the contrary, the tension between the parties was in fact escalating.

343. The negotiation between the EMB on the one side and the surplus teachers as well as the PTU on the other side had broken down.

344. Furthermore, the deadline of the PAP happened to be on the eve of 1.7.2004 when hundreds of thousands people were ready to march on the streets for all sorts of grievances against the Government.
345. The surplus teacher problem would only intensify the discontent towards the Government and exert more political pressure upon the Government, particularly, the then CE.
346. It is submitted that, after receiving the PTU's press release in the afternoon of 29.6.2004 and upon reading its contents, Prof Li was driven to pick up the phone early in the evening on 29.6.2004 to call the President of HKIEd, in the hope that the HKIEd would give support to the Government's decision not to extend PAP so as to reduce some of the political pressure that had arisen from the problem of surplus teachers.
347. It is further submitted that the general statement from HKIEd, which had been issued more than a month before, welcoming the Ombudsman's report would not have been strong enough for the purposes of Prof Li's confrontation with the PTU at the end of June. He needed a more pointed statement. That would have been the reason why he telephoned the President of the Institute in the early evening of 29 June 2004 to demand a statement to condemn the surplus teachers and the PTU.

**(III). THE TELEPHONE CONVERSATION BETWEEN PROF LI AND PROF LUK IN THE EVENING OF 29.6.2004- THE CONTENTS OF THE CONVERSATION- PROF LUK'S EVIDENCE**

348. It is not disputed that a telephone conversation did take place between Prof Luk and Prof Li in the evening of 29.6.2004 in respect of surplus teachers. [Day12 p. 18 lines 19 to 20]

349. It is common ground that it took place in the early evening. Prof Li's evidence was that it was a bit after 6 p.m. on 29.6.2007. [Day36, p.143, lines 22 to 23]

350. As a historian, Prof Luk is able to recall vividly what happened on that day. He gave evidence that:

*"I was working in my own office. I happened to be acting president, because Prof Morris was out of town. My telephone rang, which indicated to me that my secretary had already left for the day. Otherwise she would have answered it from outside. My telephone rang and I picked it up and it was Ms Doreen Cheng. She told me there was a call from the SEM. And she had told Prof Arthur Li's secretary that the President was out of town and Prof Arthur Li wanted to speak with the acting President. So she put me through. I don't remember whether or not it was Prof*

*Li's secretary who first spoke with me or not, I don't remember that. But as soon as Prof Li came on the line, he demanded to know if I was the acting President. He didn't ask my name."*  
[Day12, p.18, line 19 to Day12, p.19 line 17]

351. Prof Luk recalled:

*"[Prof Li] said, 'I want you to issue a statement to 譴責' -- I would translate that as 'condemn' -- 'to 譴責 the teachers who are staging a sit-in and the PTU', which was supporting the sit-in."* (emphasis added) [Day12, p. 20, lines 9 to 12]

352. Prof Luk testified that Prof Li's tone was firm and commanding.  
[Day12, p. 31, lines 6 to 8]

353. Prof Luk gave evidence that the following conversations took place:

*"I asked him, 'Why would I have to issue such a statement?' He said, 'Because they are stopping your students from getting jobs.'"* [Day12, p. 30, lines 5 to 8]

*"I said, 'I'm sorry, Prof Li, I cannot issue such a statement because both our newly graduating class as well as the teachers made surplus, made redundant, both of them are our students.' So one cannot really say, 'Those people are stopping our students from getting jobs', because both groups are our*

*students.*” [Day12, p. 32, lines 19 to Day12, p.33, line 1]

354. Prof Luk further testified that:

*“[Prof Li] shot back very very angrily --- It was a quick response.*  
[Day12, p.33, lines 5-7]

*“你唔出丫嗎？！好。” (“Aren’t you going to issue that? All right.”) “I will remember this, you will pay.”* [Day12, p. 33, lines 16 to 17]

355. The request to Prof Luk by Prof Li was also evidenced by a contemporaneous record, namely an email dated 30.6.2004 sent by Mr. Ng Shun Wing to the Hon. Mr. Cheung Man Kwong at 9:39 a.m., reporting his discussion with Prof Luk on the same day. It writes:

*“李國章要求教院出聲明，教院拒絕脅迫聲明”.* (emphasis added) [W2/p.36, para. 4]

356. It should be emphasised that the words “脅迫聲明” meant a statement to condemn.

357. Ms Katherine Ma also confirmed that Prof Luk reported to her that Prof Li did telephone Prof Luk and demanded him to issue a statement to condemn the surplus teachers for staging a sit-in demonstration. Ms Katherine Ma testified that:

*“I try my best to show the exact wording. So the SEM called me*

*and I ask him, "Why would he call you?" ...Then Prof Luk said, "Because Paul is away."...So he was in the acting position. Then Prof Luk went on to say, ... "Prof Li wanted us to issue a statement to condemn the surplus teachers". I responded by saying, "How can we do that?"..."It is very unusual, very rare for us to issue a statement to condemn a group of people. I also added, "(Chinese spoken)". "So what we usually do is more about the policies, but not a group of people." Prof Luk also said, "The SEM was very angry." ... I asked him, "So what shall we do?" ... Then he said he's thinking of what we can do to help... I think that is really what I can recall from that conversation."*  
(emphasis added) [Day18, p.94, lines 6-23]

### The Fear

358. Prof Luk testified that those words were said in an angry and forceful tone. [Day12, p. 34, line 1]

359. Prof Luk was frightened and afraid. [Day12, p. 34, lines 7 to 12]

360. Prof Luk first feared for himself. He said:

*"My first, I suppose, gut response was a fear for myself, because, as I said, I wasn't used to being talked to like that. And then after a second or so, as I thought about the Institute, about the*

*student numbers, I was fearful for the Institute also.” [Day12, p.38, lines 8 to 12]*

361. Then Prof Luk became worried that the HKIEd would be prejudiced because of his refusal to comply with the command of Prof Li. He testified that:

*“... then I suppose after a second of this rather instinctive response of fear, I began to think of the consequences, like, thinking back to that telephone call that he had made to Prof Morris a few months before about allowing Mrs. Law to cut our student numbers and so on. We knew at that time that our student numbers would be cut because we had the allocation letter for the triennium plan in May, which was by that time about seven weeks before this telephone call about the redundant teachers.*

*“So all those fears which were now more institutional fears rather than instinctive fears, all those fears came to the fore of my mind and I was worried about what the Institute might have to pay for my refusal to issue that statement.” [Day12 p. 34 lines 2 to 17]*

### **After the threatening Telephone Call**

362. According to Prof Luk, he therefore wanted to ameliorate the situation and so, after a short pause, he said to Prof Li:

*“Sorry, I really cannot issue the statement. But if there’s anything I could do to help with this impasse, I would be glad to do it. So I said ‘Maybe I could call up the PTU to see if there’s anything I could do, you know, to get the two sides to talk again.’”* [Day12, p.35, lines 19-24]

363. So Prof Li gave him the telephone number of his direct line, which he wrote down in his diary [ML-B/p.137]. [Day12, p.36, line 1]

364. After they hung up, Prof Luk rang up the Hon. Mr. Cheung Man Kwong of the PTU to see whether there was anything he could do to help, and the Hon. Mr. Cheung Man Kwong told him that the two sides were already talking directly and there was no need for him or anyone else to intervene. That was a very short conversation. [Day12, p. 36, lines 3-16]

#### **(IV). PROF LI’S EVIDENCE**

365. Prof Li denied the contents of the telephone call as described by Prof. Luk. He said that there was no reason for him to condemn the teachers who were staging a sit-in demonstration, nor to condemn the PTU. [Day34, p. 66, lines 10-12]

366. He claimed that:

*“The topic we were discussing was basically, I **thanked** the Institute for issuing a statement the previous month welcoming the ombudsman’s ruling that PAP was unfair and I basically asked Prof Bernard Luk, who was the acting president, to issue a similar supporting statement at the ending of this PAP.”*  
(emphasis added) [Day 34 p. 69 line 1-6]

367. Prof Li alleged that any statement by the HKIEd issued to condemn surplus teachers would make no difference whatsoever.  
[Day34, p.173, line 5-6]

368. He also denied that he had said *“I’ll remember this, you will pay.”* [Day34 p. 69 lines 15 to p. 70 line 2]

369. He said that he thought the comment made by the Registrar of HKIEd in Singtao Daily News and reported on 30.6.2004 [N3/p.131] was a response to his request [Day36, p. 160, lines 7 to 16] and he was satisfied with that measure taken by the HKIEd. [Day34, p. 73, lines 9 to 10]

370. It is submitted that Prof Li’s version as to what had happened is totally unbelievable:

*In General:*

- (1) The press statement by HKIEd in response to the Ombudsman’s report was issued on 21.5.2004 [EMB7/p.292].  
It is unbelievable that Prof Li called Prof Luk more than a

month afterward to “thank the HKIEd” and asked him simply to issue a press statement to the same effect;

- (2) The version given by Prof Li that the conflict between the EMB and the PTU had resolved by 29.6.2004 was shown to be untrue as set out above;
- (3) Prof Li’s evidence that the statement to condemn surplus teachers would make no difference is wholly incredible. In fact, there was every reason for him to want such a statement from a third party. Should the EMB issue a statement condemning the surplus teachers and/or PTU, it would only bring about more animosity from the teachers and even the general public. However, the situation would be entirely different if the statement of condemnation were to be issued by a third party, particularly the HKIEd. It would likely result in an internal conflict among the teaching sector. The newly graduated teachers and the surplus teachers would be at each other’s throat, and the PTU would be caught in the middle.;
- (4) It was really the trait of Prof Li to use threatening words. In the lunch with Dr Ip on 19.7.2002, Prof Li told Dr Ip that HKIEd would be raped if he did not agree to a merger. In the taped telephone conversation, Prof Li said to Prof. Morris: “ *“I will retaliate”*. These are exactly the mirror images of “*I will remember this, you will pay*”;

- (5) The telephone call to Prof Luk came immediately after the press release of PTU was faxed to Prof Li from Roger, the press officer. It is thus more likely than not that Prof Li did want a statement to condemn the surplus teachers.
- (6) The corroborative evidence from Mr Ng Shun Wing regarding the fact that Prof Luk refused Prof Li's request for a statement to condemn surplus teachers; [W2/p.36, para. 4]

### **Registrar's comment**

- (7) If what he suggested in respect of the Registrar was accurate, it was inconceivable that he did not call back Prof Luk on the following day to thank him. [Day36, p.161, line 23 to p.162, line 3;
- (8) In fact, the uncontradicted evidence of the Registrar is that:  
*"The views I expressed to the Sing Tao Daily was communicated through a telephone interview when I was approached by a reporter of the newspaper and I responded on my own accord".* [W2/8, para 5]
- (9) The Registrar also confirmed that he did not have any communication with Prof Luk regarding his statement to Sing

Tao either before or after the telephone interview. [W2/8, para 7]

(10) The evidence of the Registrar and Prof Luk is further buttressed by an email dated 30.6.2004 at 9:39 a.m. sent by Mr. Ng Shun Wing to the Hon. Mr. Cheung Man Kwong. It stated that:

“今天張永明在星島要求今天解凍的只是張的個人意見，不代表教院。” [W2/p.36]

### **Submissions**

371. **The request from Prof Li to Prof Luk to issue a statement to condemn the PTU and the surplus teachers for staging a sit-in was an interference with the institutional autonomy of the HKIEd and a blatant disregard of the freedom of speech and freedom of demonstration of the PTU and its members.**

372. **The request from Prof Li was an interference with the “independence” of the HKIEd regarding its “internal governance and administration”. It was an infringement of the “freedom of action in managing their affairs within the restraints of the laws of Hong Kong”. [para. 1.21 of Chapter 1 of the UGC Notes on Procedures]**

**373. The conduct of Prof Li has brought the reputation of the Hong Kong Government into disrepute when he, in his capacity as the SEM, threatened Prof Luk by saying “I will remember this, you will pay”.**

## I. SUBMISSIONS IN RESPECT OF THE 2<sup>ND</sup> ALLEGATION

### (I). MRS. LAW'S PRACTICE TO CONTACT PEOPLE WHO DID ANYTHING CRITICAL OF EDUCATION POLICY IN THE MEDIA/ACADEMIA

374. It is not disputed that Mrs. Law did have a habit of calling up writers who criticised government policies on education. She admitted in her witness statement that:

*“Occasionally, I would call the writer, if there were any serious misunderstanding of the government policy or significant differences of view in a commentary, or where the writer had offered a new perspective or good suggestions”* [W1/p.154 para. 24]

375. It is Mrs. Law's own evidence that: *“... in normal circumstances, I would just call the writer directly”* [Day29, p.137, lines 8-9]. See also [Day31, p.35, lines 22-23]

376. It seems that Mrs Law's personal conviction is that views which appeared in newspapers articles and comments on the Government's policy should always be *“balanced in presentation”* and there must be *“a positive approach to all the challenges arising out of any reform”*. [Day29, p.130, lines 12-15]

377. In the context of the Small Class Teaching Seminar held on

29.10.2002, she said in her evidence that: “... we would like to see academic institutions being opinion leaders, really explore all the perspectives on a subject of such importance for Hong Kong” [Day31, p. 116, lines 16 to 22]. She also said that: “I probably had a higher expectation of a tertiary institution, where they hosted these seminars, I hope they would take a more balanced approach.” [Day31, p.115, lines 14-18]

378. She said that she wanted the HKIED, being an academic institution, to “take a more professional approach and be more balanced in the presentation of views [Day31, p.116, lines 3-5]. Mrs Law said: “for a university, an academic institution to run a forum, I expect them to exhaust or explore different perspectives.” [Day31, p.23, lines 9-11]

379. When pressed by Mr Yu SC during cross-examination, Mrs Law confirmed her dislike towards a negative image of the teaching profession painted in the media as follows:

*“Mr Yu: If you go to [ML-B/p.155], paragraph 2.12, this is what is recorded by the Institute:*

*‘On the issue of the image of the teaching profession, PSEM wanted all parties to work behind the scene to improve the image. She observed that while EMB had made a number of efforts in recent months to promote a positive image of teaching, there continued to be stories and comments in the*

*media which conveyed images of teachers as overworked, harassed and demoralised; some of these stories and comments were attributed to teacher educators. **She wanted such negative images to be stopped**, since they would discourage young people from wanting to go into teaching...'*

*Answer: Yes*

*Mr Yu: The first question is...do you agree this is what was said by you at the meeting?*

*Answer: I do accept this is a recurrent theme, that I appealed to all the stakeholders to work together and **project a positive image** of the teaching profession, yes.*

*Mr Yu: You are asking them to be positive rather than negative?*

*Answer: Yes.*

*Mr Yu: You wanted the **negative images to be stopped**?*

*Answer: Yes, as far as possible.” (emphasis added) [Day30, p.165, line 2 to p.166, line 2]*

380. When questioned by the Chairman, Mrs Law acknowledged that she was a forthright person and might give the impression that she was unhappy about articles written by members of the teaching staff of HKIEd:

*“The Chairman: Mrs Law, is it possible that in your dialogue or conversation with Prof Morris, that you might have given him the impression that you were not too happy about these criticisms in the articles published by HKIEd’s teaching staff? Is it possible? Perhaps from the way or your style of talking or that sort of thing?*

*Answer: Well, maybe. I’m a forthright person. You know, I call a spade a spade. And I think in my first witness statement, I also made it very clear that it’s my recurrent theme that I would appeal to all teacher educators to be more positive and constructive in their approach to education.” (emphasis added) [Day29, p.86, line 25 to p.87, line11]*

381. It is submitted that the evidence relating to the 2<sup>nd</sup> Allegation should be assessed against the practice of Mrs Law to contact people who had criticized the educational policies of the EMB and the belief of Mrs. Law that the negative images of the teaching profession

should be stopped.

382. It is therefore clear that Mrs Law would have made those telephone calls with the intention of stopping and/or expressing her dislike towards the “negative” comments made against the EMB.

383. Most importantly, Mrs Law told the Commission upon cross-examination by Mr Yu SC that: *“assuming that I wanted to fire Ip Kin Yuen, then I would go to the head, irrespective of how many layers were in between.”* [Day31, p.7, lines 19-21]. It is submitted that this was exactly what she did on occasions as disclosed in the evidence before the Commission.

**Mrs. Law made an admission that she did ask Prof Morris whether he could do anything**

384. Most importantly, Mrs. Law admitted to the Chairman that she did call Prof Morris on one occasion to ask him whether there was anything he could do with regard to staff who had made critical comments against the Government:

*“Answer: I think that at one point, Prof. Morris already said to me that, you know, there is very little he could do about what his professors write. So I think .....*

*The Chairman: So you might have .....*

*Answer: I might have raised it on one occasion, but as I said, once is enough. I wouldn't repeat that.*

*The Chairman: All right. You might have raised it once. That's in connection with what you perceived—*

*Answer: "I think that would be the early days, the very early days, very early days.*

*The Chairman: So the situation was you came across certain articles, the content of which you find incorrect or objectionable, whatever, and presumably that would have been an author from HKIEd, otherwise you wouldn't have called Prof Morris?*

*Answer: Presumably, yes."*. (emphasis added) [Day 31, p.99, line 21 to p. 100, line 11]

385. She further testified that:

*"Answer: I expressed my concern and I said when I first approached him, probably I asked him whether there was anything that he could do.*

*"The Chairman: But that was the only occasion you remember?*

*“Answer: I think once he rejected on not so strong terms, once he said, you know, actually there was very little he could do and that you know, you’d better do it some other way and I would take his advice and not do it again.*

*“Question: Do you remember who was the target”? I shouldn’t use the word ‘target’. Who was the person involved?*

*“Answer: I can’t remember. It must be very early in the days, yes.*

*“Question: Could it be Mr. Ip?*

*“Answer: No, unlikely, because Mr. Ip’s articles are generally mild. You know the reason why I was angry with Mr. Ip is not because of his articles. (emphasis added) [Day 31, p.106-107]*

386. On the other hand, Mrs. Law’s practice of calling Prof Morris to express her discontent towards HKIED’s staff who had written critical articles and requesting him to sack them were well documented as follows:-

(1) a letter dated 4.11.2002 from Prof Morris to Mrs. Law, copied to Dr. Ip and Prof Li: *“with regard to the telephone conversation on 30 October. You contacted me to enquire why we had organised 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.*”[ML-A1/190]

(2) An email from by Prof Morris to Dr. Thomas Leung dated 19.9.2003: *“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 encouraged me to basically **get rid of them**. 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 government’s policy.”* (emphasis added) [ML-A1/206]

387. The credibility of the witnesses concerned should also be assessed against contemporaneous records which clearly support the case of Prof Morris.

**(II). MRS. LAW HAD RESERVED HER EVIDENCE UNTIL ALL EVIDENCE AGAINST HER WAS REVEALED**

388. In her first witness statement dated 23.3.2007, Mrs Law said:

*“49. I am not able to comment without more specific information on the context of the four alleged telephone calls other than to say that there is simply no logic or reason for me to make these alleged demands”* [W1/p.161 of Mrs. Law’s witness statement

dated 23.3.2007].

*“55. Until I am fully informed of circumstances surrounding the alleged conversations under the 2<sup>nd</sup> Allegation, the above are what I am able to say at this stage by way of assistance to the Commission.”* [W1/p.162 of Mrs. Law’s witness statement dated 23.3.2007]

389. By that time, Mrs. Law already had the particulars of the allegation, namely the specific dates of the telephone conversation and the staff of HKIEd involved [CB/p. 16-17, 149-151, 158-159]. However, she did not mention in her statement any of her recollection.

390. Despite the fact that Prof Morris, Prof Luk and all others had filed their witness statements in the afternoon on 23.3.2007 setting out in detail the 2<sup>nd</sup> Allegation, Mrs Law did not file her supplemental witness statement responding to the very specific allegations made against her.

391. It was not until 11.4.2007, after Prof Morris had finished his 6<sup>th</sup> day of testimony (out of 7 in total) in the box by which time he had substantially finished his evidence on the 2<sup>nd</sup> Allegation, that Mrs Law saw fit to file her second witness statement which only

responded briefly to each of the telephone calls relevant to the 2<sup>nd</sup> Allegation.

392. On 14.5.2007, just one day before Mrs Law started to give evidence, she filed a 58-page long witness statement which gave a very specific account of the telephone calls. (The electronic copy of the fourth witness statement was only available at 6:15pm on 14.5.2007.)

393. On the other hand, it is particularly worth noting that, in her evidence, she described what she normally would do and what logically would do rather than what she had recollected. Therefore, most of her testimony was given in argumentative or deductive ways, rather than based on her actual recollection of events.

394. First, her testimony was based on what she thought she would do or would not do in general:

(1) “Question: ... “If we want to dismiss someone, what should we do? Why can’t I dismiss him?” Answer: **This is not a question that I would ask.**” (emphasis added)

[Day29, p.147, lines 18-20]

(2) “Prof Mok, She attributed to me some questions, which **I thought I would never ask.**” (emphasis added)

[Day30, p.3, lines 16-19]

(3) “Why would I say certain things?...So **I would not**

**imagine myself ever saying such things to her...So that is outright impossible.”** (emphasis added) [Day30, p.4, lines 6-10]

- (4) “I don’t think I would use the word “professor” to describe Ip Kin Yuen because in my concept, “professor” is much more senior.” (emphasis added) [Day29, p.143, lines 19-21]; see also [Day29, p.144, lines 22-25]

395. Secondly, even though some of Mrs Law’s testimonies were couched in terms like “I am positive I did not say something”, they were not based on her recollection but allegedly logical impossibilities which, in our submission, are either false or untrue:

- (1) **“I’m also positive about what I have not said to Magdalena, because this is clearly impossible.”** (emphasis added) [Day30, p.132, lines 18-20]
- (2) **“I think it’s completely impossible** for me to order a friend to fire an academic staff member. It’s entirely beyond Magdalena Mok’s authority or ability to even procure the dismissal of Mr Ip.” (emphasis added) [Day30, p.150, lines 8-11]
- (3) **“I did not, in all seriousness, order her to dismiss [Mr Ip Kin Yuen], because that was clearly not possible** and not achievable and I would not have ordered my classmate to do something that is not achievable.”

(emphasis added) [Day30, p.154, lines 17-20]

(4) “Question: You said in your evidence that you did not say [起碼無得升]...? ... “Answer: I wouldn’t – **I did not say this**. It’s impossible, you know, because Magdalena Mok is not the supervisor of Mr Ip.” (emphasis added) [Day30, p.146, lines 11-20]

(5) “I knew very well that Ip Kin Yuen’s supervisor is Prof Lee Wing On. So I could not have asked her to look up the phone book.” (emphasis added) [Day30, p.5, lines 3-5]

396. It is submitted that Mrs. Law did not honestly tell the Commission her recollection of the incident but rather waited for the evidence against her to be revealed before coming up with a version which is most advantageous to her.

### **(III). THE TELEPHONE CALL TO PROF MORRIS ON 30.10.2002**

#### **Background**

397. It is common ground that the Government did not adopt a policy on small class teaching. [Day30, p.159, lines 6-7]

398. In fact, Mrs Law has strong views against small class teaching. This is evidenced by what she said when she was cross-examined by

Mr Lee SC:

*“We already know that small class teaching is a highly political issue around the world. Everybody loves small class teaching. But nobody or not everybody realises that it is costly and in order to be cost effective, a lot more work needs to be done than simply reduce the number of students in a classroom” [Day31, p.23, lines 13-19]*

*“It’s very attractive to poll suggestions, but as civil servants, we are the guardian of public interest and we have to ensure the cost-effective use of money, even if there are savings. ” [Day31, p.23, line 24 to p.24, line 2]*

399. Mrs Law’s negativity towards the implementation of small class teaching is also made abundantly clear by her cold remarks of her superior Prof Li’s dream of small class teaching upon cross-examination by Mr Lee SC:

*“Answer: Everyone can have a dream, but when the sun comes out, we have to face the reality.*

*“Question: The dream was almost immediately dashed?”*

*“Answer: When the reality dawned on [Prof Li]. And I must give credit to Prof Li, that he very much has the interest of Hong*

*Kong and public interest at heart.*” [Day31, p.21, line 25 to p.22, line 5]

400. It is also common ground that:

(1) on 29.10.2002, Mr. Ip Kin Yuen organised a seminar to promote Small Class Teaching (“the Seminar”).

(2) The Seminar was held at the Institute and external speakers, including the Hon Mr. Cheung Man Kwong from the PTU, were invited to participate in the Seminar.

(3) The Seminar was reported in the Sing Tao Daily News on the next day. [W1/p.99 para.48 of Prof Morris’ witness statement] [ML-A3/p.71]

401. It should be noted that the Seminar was reported in the Education Page of the Sing Tao Daily News in a less prominent area. [ML-A3/p.71]

402. However, the coverage was associated with another major news article concerning a crisis created by an increase in unemployment of teachers due to the decrease in demography. The headline of the article was:

“下學年縮逾二百班 - 蒸發六百教席 - 教師就業保證響警號

業界促檢討 - 教協反對

403. The abstract of the article reads:

“小學近年大幅縮班, 教席逐年減少, 學校實難容納所有股影響的教師, 教育界人士倡議當局檢討現時「保證就業」及「遲來先走」的原則. 不過, 代表逾三萬教師的教育專業人員協會警告, 若政府改變有關原則, 將發動比反遵語文基準試更大規模的抗議”.

404. The small class teacher was therefore portrayed as a solution to the growing problem of unemployed teachers.

“團體指小班教學合時機-- 面對未來適齡人口不斷減少, 在一個研討會上教育界均認為這是小學實施「小班教學的黃金機會」”

405. It is submitted that the association of small class teaching with the problem of unemployed teachers would be to the dislike of Mrs. Law since it provided a strong reason for the government to adopt the small class teaching as a policy which Mrs. Law took issue with. Further, it added fuel to the PTU's advocacy for small class teaching and/or preserving the principle of “employment guarantee” and “first

in, last out”. Neither of these which would be to the liking of the EMB.

### **The Telephone Conversation**

406. It is common ground that there was a telephone conversation between Prof Morris and Mrs. Law on 30.10.2002. The only dispute relates to what was said during the telephone conversation.

### ***Evidence of Prof Morris***

407. It is the undisputed evidence of Prof Morris that on 30.10.2002, he received a telephone call from Mrs. Law and she was very angry at the time:

*“She was very angry that the day before -- the 29th, that is -- the Institute had organised a seminar conference promoting small class teaching. She made a number of angry points. She was very angry. Amongst the point she made was, one, why were we using Institute resources, which were public money, for organising such an event; why did we invite the PTU to the Institute to give it a forum to present its views -- because one of the guest speakers at that event was Cheung Man Kwong.”*  
(emphasis added) [Day5, p. 101, lines 2-11]

408. Prof Morris further testified that:

*“If I can take one step back, please, to fill in the picture. The event on the IEd campus was held on the 29th. It was reported in the newspapers on the 30th. She was therefore responding to the newspaper coverage of that event.*

*She went on to ask me 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.**”(emphasis added) [Day5, p. 101, lines 12-20]*

409. Prof Morris also gave evidence that: “ *...amongst the points she made was that it was objectionable that we organized [the seminar], why did we organize it, it was **contrary to Government policy**, why did we invite the PTU and allow them to air their views on campus, why did we use public money for activities like this.*”(emphasis added) [Day6, p.64, line 23 to p.65, line 4]

410. Prof Morris testified that: “*I think the conversation started talking about both of them, but by the end of the conversation I think she was more specifically talking about Ip Kin Yuen.*” [Day5, p. 101, lines 22-24]

411. He supplemented that:

*“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.’ [Day5, p.102, lines 5-11]*

412. In reply, Prof Morris suggested that if Mrs Law did not agree with the views of Dr KC Lai and Mr Ip Kin Yuen, she should contact them directly. Prof Morris took the view that unless what they said was illegal or immoral, then they had the right to express their views. He was certainly going to make no attempt to discontinue their employment at HKIEd. [Day5, p.102, lines 13-18]

413. Prof Morris was adamant about the substance of the conversation. He testified that:

*“I remember clearly what the substance of the discussion was on 30<sup>th</sup> October 2002”. [Day6, p.64, lines 4-5]*

*“... Mrs Law explicitly asked me to sack two staff, so I do remember it very well. This is not something one forgets.” [Day6, p.64, lines 4-10]*

414. Prof Morris was categorical that Mrs Law did use the word

“sack”. [Day6, p.65, lines 12-13]

### *Evidence of Mrs Law*

415. It was admitted by Mrs. Law that she called Prof Morris on the morning of 30 October 2002 after reading the Sing Tao Daily newspaper report (exhibited at ML-A3/p.71). [W2/p.128, para. 56, witness statement of Mrs Law dated 14 May 2007] [Day29, p.21, lines 6-10]

416. Mrs Law said in her evidence-in-chief that:

*“I think what happened that morning was I read the Sing Tao Daily newspaper report. I usually receive these press cuttings in the morning, around about 8.30. I did not have any meeting that day, so I probably called Prof Morris before 10 o’clock. I asked him about this seminar and in particular, I of course took issue with the fact that the Professional Teachers’ Union were invited, whereas EMB was not. At that time, the primary student population was beginning to decline and there was a call from the Professional Teachers’ Union that we should introduce small class teaching immediately, so as to resolve the problem of surplus teachers. That was more or less a political agenda, but from the Government’s point of view, we felt very strongly that if we were to make a policy with such significant financial and long-term implications, this should be dealt with independently*

*and not be bundled with another problem, which is political in nature.*

*In fact, you know, I questioned Prof Morris why he organised a seminar to offer a platform for the Professional Teachers' Union, but at the same time, did not invite EMB to present a different perspective. So that was really the gist of it.*"(emphasis added) [Day29, p.52 line 15 to p. 53 line12]

417. It is of paramount importance to note here that, even based on Mrs Law's own evidence, she was trying to interfere with the way members of HKIEd chose to pursue their discussion on education policy in Hong Kong. It is an interference with the freedom of members of the academic community to inquire, discover and publish their views on education policies formulated by the Government.

418. It should be noted that the evidence of Prof Morris and Mrs. Law in respect of that telephone conversation bear a number of similarities:-

- (1) The object of the telephone conversation was to voice Mrs. Law's objection over the Seminar;
- (2) It is a common ground that the PTU was mentioned. Prof Morris said Mrs. Law remarked, "*why did we invite the PTU to the Institute to give it a forum to present its views*". [Day5,

p.101, lines 8 to 11] *cf* Mrs. Law's evidence - "*in particular, I of course took issue with the fact that the Professional Teachers' Union were invited, whereas EMB was not*" [Day29, p. 52, lines 20 to 22] and "*I questioned Prof Morris why he organised a seminar to offer a platform for the Professional Teachers' Union, but at the same time, did not invite EMB to present a different perspective.*" [Day29, p. 53, lines 8 to 11]

### *The Dispute*

419. The only issue between Mrs. Law and Prof Morris was whether Mrs. Law had requested Prof Morris to sack Mr. Ip and Dr. Lai.

420. More specifically, Mrs. Law did not admit in her evidence that:

- (1) she had knowledge of the involvement of Mr. Ip Kin Yuen and Dr. Lai Kwok Chan in the Seminar;
- (2) she mentioned Mr. Ip and Dr. Lai in the telephone conversation; and
- (3) she requested Prof Morris to sack them.

421. It is submitted that the evidence of Mrs. Law on this matter is confusing and unbelievable.

**Mrs. Law's Evidence that Her Knowledge of the Seminar only came from the report of the Sing Tao Daily newspaper was Unbelievable**

422. Mrs. Law claimed that she only knew about that Seminar after reading the Sing Tao Daily Newspaper in the morning on 30.10.2002.  
[Day29, p. 15 lines 16 to 21]

423. She alleged that:

*“I did not know about the seminar at all and in fact, at that time, it would be still Education and Manpower Bureau was not invited to that seminar and we did not have any information about it at all.”* [Day29, p. 17 lines 16 to 19]

424. She also claimed that: *“No, I wasn’t aware of the involvement of these two gentlemen at all.”* [Day29, p. 20, lines 12 to 13]

425. Upon cross-examination by Mr Lee SC, Mrs Law further claimed that: *“the bureau was clearly not involved in that seminar and was not invited and we had no record of having even been told that there was such a seminar... .”* [Day31, p.50, lines 23-25]

426. However, Mrs. Law’s evidence was directly contradicted by the contemporaneous documentary evidence at [ML-A3/p.66 to 70].

***The Emails dated 23.10.2003 and Ip Kin Yuen***

427. It is clear that on 23.10.2002, an email was sent by Miss Tammy Suk Yee Fung of the Centre for Research and International

Collaboration of the HKIEd to Mr. Andrew Poon, the Assistant Director of Education (Chief Inspector of Education) of the Education Department [ML-A3/p.66].

428. The email thanked the Education Department for agreeing to disseminate the information regarding the Seminar. It also attached an invitation letter and a poster of the Seminar.

429. Another email to the same effect was sent to the Manager of the General Office of the EMB. [ML-A3/p.67]

430. The said invitation letter clearly stated that the speakers included the Hon Mr. Cheung Man Kwong and Mr. Ip Kin Yuen. It should also be noted that in the introductory paragraph, it is stated that:

“過往數年本港中、小學都向政府爭取減少每班學生人[數]以改善教學環境，提高教育素質。但政府礙於涉及龐大資源，遲遲未能全面落實這方面的要求。鑒於近年香港適齡學生人數持續下降，有教育界人士認為應把握黃金機會，推行「小班教學」。教育界及有關官員亦開始廣泛討論有關問題。相信，你們作為教育界工作者，會關心如何在目前及未來可見的條件下，更有效實現不同形式的「小班教學」，讓學生的教育得到最大好處。”(emphasis added) [ML-A3/p.68]

431. The invitation letter was signed by Prof YC Cheng and Dr. Wong Ping Man. [ML-A3/p.68]

432. The poster also stated that Prof YC Cheng was the host and Mr. Ip was one of speakers. [ML-A3/p.70]

433. According to the uncontradicted evidence of Mr Ip Kin Yuen, who had worked directly under Mrs Law in the Education Department [Day20,p.24, lines 4-7], Mrs. Law *“is a very industrious person and would have shown her concern in every aspect of work in the Education Department”*. Given the highly sensitive nature of the topic that the Seminar was addressing and given that Mrs. Law *“is a very industrious person and would have shown her concern in every aspect of work in the Education Department”*, it is highly inconceivable that such information would not have come to her attention. [Day20, p.25, lines 15-17]

434. It is submitted that Mrs. Law would have obtained information concerning the Seminar from her colleagues and would have known the involvement of Mr. Ip before she made the telephone call to Prof Morris in the morning on 30.10.2002.

***Dr. Lai Kwok Chan***

435. It is Dr. Lai’s evidence that he did attend the Seminar. He testified that:

*“I have checked the photographs of that seminar. I think I was*

*there for about 20 minutes, since there's a photo showing me sitting within the audience and then I disappeared. My diary shows that I left the seminar, I think about after 20 minutes, and then I head to a meeting with EMB."* [Day19, p. 4, lines 20 to 25]

436. Dr. Lai confirmed his involvement in the Seminar, though he only played a minor role. He said that:

*"The seminar was organised by Mr Ip Kin Yuen and Prof Cheng Yin Cheong. It was the beginning of my joint project with Mr Ip Kin Yuen. In September, we were preparing for a seminar on small class teaching in Shanghai, which was to be held on November 19th 2002. So Mr Ip, I think, and Prof Cheng Yin Cheong was responsible for the October 29th seminar, which was more a sharing by local school educational associations and practitioners. I was responsible or actually I supervised my office in preparing an announcement for the Shanghai seminar, which was distributed during earlier, that's the October 29th seminar."* (emphasis added) [Day19, p. 2, line 19 to p.3 line 10]

437. The pamphlet at E2/p.132-3 which was distributed at the Seminar clearly stated that Dr. Lai was to be the host of a seminar to be held on 19.11.2002.

438. Furthermore, according to Dr. Lai, he was a member of the Working Group on Teacher Supply and Demand of the EMB at that time. The working relationship between him and the EMB suddenly came to an abrupt stop by the end of 2002. He testified that:

*“A. The relationship of that working group came to, as I mentioned in my witness statement, an abrupt stop by the end of 2002, because after I had attended the last meeting, the ninth meeting in December, I was not told whether the work of that working group had stopped. I did not receive any thank you letter. I did not even receive the minutes of the last meeting. So I had no idea whether the work had really stopped or whether they decide not to call me back.”*

*Q. What did you do at the ninth meeting?*

*A. I don't think it was particular with that meeting. My guess was that because I had held a press conference, on October 30th, 2002, criticising the Government's retreat from Mr Tsang's policy of requiring teachers to be newly trained in his policy address and then in mid-November, I became more prominent in organising seminars on small class teaching. Of course, I could not present any concrete evidence of that, but I think my impression that the relationship then had become a bit more strained.” [Day19 p.88 lines 2 to 22]*

### **Submissions**

439. It is submitted that having regard to the sudden change of relations between the EMB and Dr. Lai, the only reasonable inference that could be drawn is that Mrs. Law knew of Dr. Lai's involvement in the Seminar before she called Prof Morris.

440. The evidence as a whole also points strongly to the fact that Mrs Law did request Prof Morris to sack both Mr. Ip and Dr. Lai.

441. When a highly ranking Government official requested the President of the HKIED to sack his staff on the grounds that they had organised a seminar promoting something which was not in line with Government policy and that the Government had not been invited to attend the seminar, that constituted a most blatant interference with institutional autonomy and academic freedom.

### **(IV). 1<sup>ST</sup> TELEPHONE CALL TO MR IP KIN YUEN ON 30.10.2002**

#### **Evidence of Mr Ip Kin Yuen**

442. Prof. Morris' testimony that he made the suggestion to Mrs Law to contact Dr KC Lai and Mr Ip Kin Yuen directly is corroborated by the evidence of Mr. Ip Kin Yuen.

443. In his witness statement, Mr Ip Kin Yuen confirmed that he had no doubt that Mrs Law did telephone him on 30.10.2002, i.e. one day after the Seminar was held on 29.10.2002 and one day before the drafting of the document entitled “Main Points Expressed by Participants in the Small Class Forum”. [W2/p.224, para. 1 of the 2<sup>nd</sup> witness statement of Mr. Ip Kin Yuen dated 18.5.2007]
444. Mrs Law’s evidence was that she called Prof Morris before 10.00 a.m. on 30.10.2002. [Day29, p.52 line 19]
445. According to the uncontradicted testimony of Mr Ip Kin Yuen, Mrs Law called him in the morning at around 11:00am or around lunch time. [Day20, p.10, lines 1-4]
446. Mr Ip Kin Yuen testified that, during the telephone conversation, Mrs Law accused him of having invited Mr. Cheung Man Kwong to the small class teaching seminar on 29.10.2002. [Day20, p.7, lines 6-8]
447. He then explained to Mrs Law that the reason was “*because Mr. Cheung Man Kwong had already viewed (sic) his points on the question of small class teaching*”. Furthermore, *Mr Cheung Man Kwong was also a prominent figure in the education sector.*” [Day20, p.7, lines 14-18]

448. Mr Ip gave clear evidence that: “*After the accusation, then Mrs Law requested me to hand over the videotape of the seminar, so as to allow her to have a clearer picture as regards the seminar.*” [Day20, p.7, line 19 to 22]

449. Mr. Ip said that he refused Mrs Law’s request:

*“But to my view that was not something proper to be done, because those friends who had attended the seminar **had not thought of the fact that their views would be viewed by Government officials.** That is why I refused for that to be done.”*  
(emphasis added) [Day20, p.7, line 22 to p.8, line 1]

450. Mr Ip Kin Yuen further supplemented his evidence by saying that he could write a summary as regards the contents of the seminar. [Day20, p.8, lines 3-6]

451. It is undisputed that Mr Ip Kin Yuen did write a summary of the discussions of the seminar dated 31 October 2002 and sent it to Mrs Law by email. [Day20, p.9, lines 13-14] [W2/p.224, para. 1, 2<sup>nd</sup> witness statement of Mr. Ip Kin Yuen dated 18.5.2007]

452. In the witness box, Mr Ip Kin Yuen said that Mrs Law was very severe during the telephone conversation. He preferred to use the word “*severe*” instead of “*angry*”, though he said there was “*a trivial*

*difference between the two*” [Day20, p.12, lines 7-18]. Mr Ip Kin Yuen said Mrs Law was using an accusing tone. The discussion was not friendly. [Day20, p.37, line 24 to p.38, line 2]

### **Evidence of Mrs Law**

453. Mrs Law alleged that she did not recall the telephone conversation with Mr Ip Kin Yuen on 30.10.2002. [Day29, p.42, lines 8-9] [Day30, p.3, lines 11-12]

454. Mrs Law also claimed that she did not recall having asked for a videotape of the Seminar, though she saw no problem if she did ask for one:

*“Furthermore, I don’t really understand why Mr Ip said the video could not be handed over, because if the seminar was open to the public and the media were invited to attend, then there is really no secrecy about what people have said on that occasion. But I simply don’t have any recollection.”* [Day29, p.46, line 21 to p.47, line 3]

455. However, Mrs Law accepted as follows: *“I trust Mr Ip being younger, maybe he remembers there was such a phone call.”* [Day29, p.44, lines 6-7]

456. Since the evidence of Mr Ip is not contradicted at all by Mrs Law,

his evidence should be accepted in its entirety.

457. Further, her telephone call to Mr. Ip Kin Yuen on 30.10.2002 would suggest that it is highly improbable, as Mrs. Law claimed in her testimony, that Mr. Ip was not mentioned in her telephone conversation with Prof. Morris earlier that day.

### **Submissions**

458. It is submitted that the evidence of Mr Ip Kin Yuen is important in two aspects:

(1) First, it shows that Mrs Law was prone to intervention. She would go so far as asking an academic in a tertiary institution to hand out a videotape which recorded critical views expressed against the Government by academics, unionists, practitioners and school principals;

(2) Secondly, it shows that it was an improper interference by Mrs Law with academic freedom and institutional autonomy when, on her own evidence, she was “questioning” and “taking issue” with Prof Morris as to why HKIEd had organised the Seminar without inviting the EMB to present a different view;

(3) It is within the institutional autonomy and part and parcel of the academic freedom of the HKIEd and its staff members to organise a seminar critical of a Governmental policy in the absence of

Governmental officials. They are entitled to organise a seminar for “*sharing by local school educational associations and practitioners*” [Day19, p.3, lines 6-7]. The participants may feel inhibited or less willing to express views if “*they know that their views would be viewed by Government officials*” [Day20, p.7, line 22 to p.8, line 1]; and

(4) It is clear that even on Mrs Law’s evidence, her action amounted to unlawful interference with institutional autonomy and academic freedom within the meaning of the Basic Law;

(5) In fact, upon cross-examination by Mr. Lee SC, Mrs. Law agreed that the EMB had no right to be involved in the Seminar. [Day31, p. 116, lines 16 to 19]

#### **(V). 2<sup>ND</sup> PHONE CALL TO MR IP KIN YUEN ON 18.12.2003**

459. It is common ground that Mrs Law called Mr Ip on 18.12.2003 and the conversation lasted for more than one hour. [E1/76] [Day29, p.128, lines 14-15]

#### **Evidence of Mr Ip Kin Yuen**

460. Mr Ip Kin Yuen’s evidence was that he had the telephone

conversation with Mrs Law two or three days before 18.12.2003.  
[W1/p.36, para. 13, 1<sup>st</sup> witness statement of Mr Ip Kin Yuen dated  
19.3.2007]

461. Part of that telephone conversation became the subject matter of  
a column by Mr. Ip Kin Yuen entitled “Shirking (from)  
Responsibility” (“推卸責任”) [Day20, p.50, lines 15-19] [E1/p.76]

462. However, the article only referred to a call from a “friend”. It did  
not disclose the name of Mrs Law nor did it mention the fact that this  
“friend” was a Government official.

463. It is not disputed that during that conversation, Mrs Law  
requested Mr Ip to write something more positive:

“「 . . . . . 你何不在專欄裏談談批改作文的好方法，學校  
怎麼編配班主任才好一點呢？我覺得最好電視台也有一個  
節目，教老師們怎樣把工作做好。」

「寫專欄當然可以，但重點不在這裏，問題是怎樣使教師可  
以從工作中釋放出來，有條件、有能力去想出好辦法……。」  
[IE2/p.76]

464. According to Mr. Ip Kin Yuen’s evidence, Mrs Law accused him

of shirking from responsibility and hung up “abruptly” on him:

“羅太氣憤地指斥我「推卸責任」便匆匆收線了...我當時是非常憤怒的。” (emphasis added) [W1/p.36, 1<sup>st</sup> witness statement of Mr Ip] [Day 20, p.14, Lines 12-13]

465. Mr Ip Kin Yuen also wrote in his column that:

“放下電話筒之際，心裏十分憤怒，怎麼不按其要求寫寫批改作文和編配班主任之道，便是「推卸責任」呢？簡直是不講道理！” [IE2/p.76]

### **Evidence of Mrs Law**

466. Mrs Law agreed that there was such a telephone conversation with Mr Ip Kin Yuen at around that time. [Day29, p.127, line 24 to p.128, line 13]

467. Mrs Law’s recollection of the telephone conversation was that:

*“So I said to Mr Ip, whether he could make use of his column to maybe disseminate some of these good practices, help teachers deal with their workload in a different way, so that their life would be easier and that everybody would be happier, rather than simply paint a gloomy picture so teachers reading his article might really sympathise with themselves and be even more*

*down and demoralised.*” [Day29, p.130, lines 3-10]

468. Mrs Law admitted that she did accuse Mr Ip Kin Yuen of “shirking from responsibility” as a teacher educator and terminated the call. [Day29, p.131, lines 14-16]

469. Under cross-examination, she agreed that she was “angry” when concluding the telephone conversation [Day30, p.127, lines 13-15] and “hung up the telephone at the end of the conversation”. [Day31, p. 88, lines 20-22]

### **Submissions**

470. **It is submitted that it is improper for Mrs Law, in the position of the PSEM, to phone up an academic in the HKIED and request him to write something positive about education. And it is also improper for her to hang up angrily on Mr. Ip just because he declined to do what she asked him to do.**

### **(VI). PHONE CALL TO PROF MAGDALENA MOK**

471. It is common ground that Mrs Law called Prof Mok some time after she had spoken to Mr Ip Kin Yuen on 18.12.2003.

### **Evidence of Prof Mok**

472. Prof Mok did not remember the date of the telephone conversation but, by deduction, she testified that it was most likely to be between the beginning of 2004 and the middle of 2004. [Day17,

p.148, lines 8-10]

473. Prof Mok gave evidence that Mrs Law said the following to her:  
*“I want you to fire Ip Kin Yuen”* or, *“I would like you to have Ip Kin Yuen fired”*. [Day17, p.142, lines 3-5]

*“But then she immediately ask me to fire Mr Ip Kin Yuen and in Cantonese, that’s “tsau” (“炒”), I was very, very surprised at that”*. [Day17, p.141, lines 7-15]

474. Prof Mok further testified that:  
*“I asked her why and then she said that because Ip Kin Yuen had published a number of articles against government initiatives and she was very angry at that. And I asked her what about these articles, because I didn’t have any recollection of reading those articles myself and then she said that it is particularly one article, but she didn’t make clear which article. She said, ‘Recently **he wrote again** and I’m very angry at that’, and then I asked her about the content of the article and then she said that it is only talks between friends, but he put it to the article and then he published it as an article in the newspaper and she repeatedly said that **she was very angry at that.**”* (emphasis added) [Day17, p.142, lines 7-19]

475. Prof Mok said Mrs Law did not tell her the title of the article but

she mentioned that it was an article in Sing Tao Daily. [Day17, p.142, lines 20-22]

476. Prof Mok recalled that:

*“During the telephone conversation, she said that **she was angry** because according to her knowledge, if people do **research**, then they should be evidence-based, but this article was not **evidence-based**. So she said ‘Since there is no evidence how can one be an **academic**? How can one be a **professor**?’”* (emphasis added) [Day17, p.142, line 25 to p.143, lines 1-6]

477. Prof Mok’s recollection as to her response was that:

*“I said Ip Kin Yuen is not a professor. Because I said that – and then she was very surprised. She said that, ‘aren’t you all professors because that’s the system used as CUHK?’ I said, ‘No, no, we have a different system. We have principal lecturers, senior lecturers and lecturers”, and Ip Kin Yuen, as far as I know, was a lecturer.”*

*“Then she again said that, ‘Anyway, I don’t think we – as professors, whatever you call them, whenever they do research, they should base on evidence and this article that Mr Ip wrote was not based on evidence.’”* [Day17, p.143, lines 7-17]

478. In her testimony, Prof Mok said she was devastated by Mrs Law’s request at the time. She thought she could have responded

better, but as she was really **frightened**, she just wanted to cut and run and so she said, "*Ip Kin Yuen has nothing to do with me*", "*I'm not his supervisor*" and "*We are not even in the same department*".  
[Day17, p.143, line 18 to p.144, line 4]

479. Mrs Law then asked Prof Mok, "*If we want to dismiss someone, what should we do? Why can't I dismiss him?*" [Day17, p.144, lines 16-18]

480. Prof Mok replied that:

*"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.*

*"Then she, at that point, asked me who is Prof Cheng in relation to me. Is he my superior or colleague? And I said Prof Cheng was my superior at work. Then she didn't pursue along that line."* [Day17, p.144, line 21 to p.145, line 11]

481. Prof Mok further testified that at that moment, Mrs Law requested that *“at least Mr. Ip Kin Yuen should not be promoted”*. [Day17, p.145, lines 16-19]

482. Prof Mok’s response was that *“I don’t even have power on that, because [Ip Kin Yuen] is someone from another department altogether”*. [Day17, p.145, lines 20-22]

483. Mrs Law was very frustrated at that and then she said that if Prof Mok was not going to fix him or deal with him, **“she would go directly to the President”**. [Day17, p.145, line 22 to p.146, line 2]

484. Prof Mok was scared and she replied: *“I can’t stop you from doing that”*.

485. Prof Mok’s testimony is that Mrs Law could not be more serious and it was basically **“an order”** to her to dismiss Mr Ip Kin Yuen. [Day17, p.152, line 20 to p.153, line 3]

486. After this conversation, Prof Mok told Dr Grace Mak and her then superior about it. [Day17, p.151, lines 22-25]

### **Evidence of Mrs Law**

487. When cross-examined by Mr Yu SC, Mrs. Law admitted that she

was very upset and angry after reading the article “Shirking Responsibility” [Day30, p.128, line 14], and soon after the article was published, she called Prof Mok. [Day29, p.140, lines 15-18]

488. She also admitted that she “was disappointed with Mr Ip”. [Day30, p.130, line 6]

489. Mrs Law accepted that “if [she] was angry, [she] should have called shortly after that article was published” [Day29, p.151, lines 23-24]

490. She said that the event was very much in her mind when she called Prof Mok. [Day30, p.130, lines 6-10]

491. Mrs Law recognised and accepted the following points of commonality between her evidence and that of Prof Mok:

(1) She was angry when she called Prof Mok. [Day30, p.136, lines 18-19]

(2) She told Prof Mok that Mr Ip Kin Yuen had written a series of articles about teachers’ workload. [Day30, 137, lines 10-11]

(3) She complained that Mr Ip Kin Yuen’s articles were not based on evidence and she referred to the phrase “loose talk”. [Day30, p.139, lines 5-8]

(4) She complained that Mr Ip Kin Yuen had revealed a private telephone conversation in his column. [Day30, p.139, lines 15-19]

(5) In the conversation, Mrs Law asked whether Prof Mok could do something (“做啲嘢”). [Day30, p.140, lines 1-7]

(6) Prof Mok did dissociate herself by saying that she was not in the same department as Mr Ip Kin Yuen. [Day30, p.140, lines 8-14]

### **Mrs. Law’s Change of Evidence on Whether She Had Used the**

#### **Word “Tsau” (“炒”)**

492. However, when it came to the specific word “tsau” (“炒”) which Prof Mok testified as having been used by Mrs Law, Mrs Law’s evidence was highly inconsistent. This not only shows that Mrs Law was not an honest and truthful witness, but that she was also opportunistic in that she would adopt any version of events not because it was true, but because it was convenient and favourable to her case.

#### ***First Version***

493. When Prof Mok was being cross-examined by Mrs Law’s

counsel Mr Mok SC, it was suggested that even if the word “tsau” (炒) had been used by Mrs Law, she did not mean it:

*“Mr Mok: And if she used the word ‘fire’, it was because she was very frustrated and **not meant to have him fired?**”*

*“Answer: I can’t answer that question, Mr Mok...” [Day18, p.60, lines 15-20]*

### **Second Version**

494. However, Mrs. Law’s evidence-in-chief was that:

*“Well, I do not remember word for word, you know, our telephone conversation, but I do not believe that I used the word, but I know Magdalena held on to this word, yes.” [Day29, p.139, lines 6-9]*

### **Third Version**

495. Mrs Law’s case on the word “tsau” (炒) changed again when she was cross-examined by Mr Yu SC. At that point, Mrs Law’s testimony was that she did not recall using the word “tsau” (炒) even though she knew well that Prof Mok had testified that she did:

*“Answer: I was not certain about the word “tsau” (炒) which*

*[Prof Mok] seems to think the word sticks in her head. You know, I simply don't recall that I've used the word and I do not believe that I have ever used the word, but I was not – you know –*

*“Mr Yu: You're not positive?”*

*“Answer: I'm not positive, yes.”*

*“Mr Yu: That part you can't say that she fabricates?”*

*“Answer: I would not say so.” [Day30, p.5, lines 10-18]*

#### **Fourth Version**

496. Subsequently, in answering a question from the Chairman, Mrs Law said she was not certain whether she used the word “tsau”:

*“The Chairman: Do you say it's not possible that you may have used certain words, without any logical foundation, but in a moment of anger or frustration – that sort of thing?”*

*“Answer: That is where I said earlier that I was not certain whether I used the word “tsau” (“炒”), you know, because she seemed to think that that word sticks so firmly in her mind. That's the only part.” (emphasis added) [Day30, p.6, lines 4-10]*

### **Fifth Version**

497. However, when further cross-examined by Mr Yu SC, Mrs Law refuted all her previous answers and said she **“would really say she did not use the word ‘tsau’ (“炒”).”** The cross-examination is set out as follows:

*“Mr Yu: You said in your evidence that you did not say... ‘At least he can’t be promoted’?”*

*“Answer: No.*

*“Mr Yu: Right?”*

*“Answer: No.*

*“Mr Yu: Is that something again you reason as ‘Something that I wouldn’t have said’?”*

*“Answer: I wouldn’t – I did not say this. It’s impossible, you know, because Magdalena Mok is not the supervisor of Mr Ip.*

*“Mr Yu: If you sit down and think, you know, rationally, I can understand your point, but if you can’t say whether Magdalena Mok is wholly wrong when she said that you used the word “fire”, I just don’t see how you can say that she must be wrong*

when she said [起碼無得升]. Do you follow?

*“Answer: Then I would really say I did not use the word ‘tsau’, then, really.”* (emphasis added) [Day30, p.146, line 11 to p.147 line 3]

### Prof Mok's Evidence should be accepted

498. From the above, it is clear that Mrs Law is not an honest and truthful witness. She changed her evidence because she saw the logic of the cross-examiner. But she would not accept Mr Yu's logic by agreeing that she would not be sure whether she had said: *“At least (Mr Ip) should not be promoted.”* Perhaps she instinctively did not want to concede too much.

499. Indeed, this is borne out by what Mrs Law said elsewhere:

(7) *“I'm also mindful that I should not put myself in a position of agreeing with her when I have no recollection of having said that.”* [Day30, p.140, lines 1-3]

(8) *“I personally don't believe that I used the word “tsau”, but, you know, on the other had, Magdalena kept on saying that this is the word that sticks in her mind, but I'm also conscious of the fact that I shouldn't be sort of obliging myself to accept what she has said”.* [Day30, p.145, lines 10-14]

500. Ant honest witness will concede when shown to be wrong. For every witness has taken an oath to tell the truth, the whole truth, and nothing but the truth, each witness who has the regard for the truth will depend his/her case by refusing to change even when caught out.

501. In the light of the foregoing, this Commission must view the whole of Mrs Law's testimony with the greatest suspicion.

### ***Prof Mok is a Credible Witness***

502. In contrast with Mrs Law, Prof Mok is a credible, reliable and courageous witness:

(9) She was a classmate of Mrs. Law for seven years when she joined St Mary's Canossian College as a Form 1 student. She has known Mrs. Law for 42 years [Day17 p. 140 line 13 to p. 141 line 24]. There is every reason for her not to testify against a personal friend whom she respects. However, she chose to come forward and tell the truth to the Commission so as to discharge her duty as a citizen of Hong Kong;

(10) She is careful and truthful in what she said in her evidence. For instance, when she was not sure whether Mrs. Law said "*I want you to fire Ip Kin Yuen*" or, "*I would like you to have Ip Kin Yuen fired*", she honestly and frankly gave both alternatives [Day 17,

p.142, Lines 3-5]. It would have been so easy to pick one of the two and stick to it;

(11) She is reliable because she was able to give the details of the incident. For example, she “searched on the net with the key words (朋友)” and “Ip Kin Yuen” and found the article in question. [Day17, p.148 line 25 to p.149, line 1];

(12) Her evidence is supported by the testimony of Dr. Grace Mak, Mr. Ip and Prof Morris. [Day18, p.220, line 9 to p.221, line 7] [W1/p.38]

(13) Prof Mok was firm and confident in her testimony. She was cross-examined rigorously by counsel for Mrs. Law with provocative questions such as “*You want to use these materials to attack Mrs. Law, don’t you*” [Day17, p.181, lines 11-12] and unjustified comments such as “*She is your friend. I hope I have better friends*” [Day17, p.181, line 14]. She was not shaken.

(14) No reason was given as to why Prof Mok would have lied to the Commission and set up Mrs Law, who has been a friend for 42 years.

503. It is submitted that if Prof Mok’s evidence is accepted as true by the Commission, it is absolutely impossible for the Commission not

to find that Mrs Law's evidence in this respect is untrue.

**Submission**

504. It is crystal clear that the giving of "an order" to Prof Mok to dismiss Mr Ip Kin Yuen is an improper attempt to interfere with the academic autonomy of the HKIED.

505. As recognised by the UGC Notes on Procedures, one of the main areas of institutional autonomy is the selection of staff. The HKIED has "unfettered rights in the selection, promotion, and dismissal of their staff."

506. The inappropriateness of Mrs Law's action will not be any way alleviated by the fact that Prof Mok did not have power to sack Mr Ip.

507. It is equally objectionable for Mrs Law to request that Mr Ip should not be promoted.

508. What is more unacceptable is for Mrs Law to threaten Prof Mok by saying that if Prof Mok was not going to fix Mr Ip Kin Yuen, she "would go directly to the President".

509. Moreover, this is also a classic case of interference with academic freedom. Mrs Law requested Mr Ip Kin Yuen to be dismissed or not be promoted on the basis that he, as "an

**academic”, has written newspaper articles which Mrs Law as a high ranking Government official did not like.**

**(VII). PHONE CALL TO PROF MORRIS IN NOVEMBER 2004**  
**(PROF YC CHENG)**

**The Series of Articles in Ming Pao**

510. From 24.11.2004 to 1.12.2004, Prof Y C Cheng published a series of articles in Ming Pao severely criticising the education reforms which were expected to be carried out in 2005. The articles criticized both ongoing reforms since 2000 as well as reforms being introduced at that time, or about to be introduced in 2005.  
[ML-A1/p.200 to 205]

511. Prof Cheng in his articles analysed some preconditions for the successful education reform of the course academic structure of senior secondary and tertiary education (學制改革), which was expected to be carried out in 2005. According to Prof Cheng, following the education reform as proposed by the Education Commission Report No. 7 in 1997 and the Education Reform Blueprint in 2000, vast number of new measures were introduced to the schools where school principals and teachers found them difficult to cope with. The situation was described by him as follows:

“教師校長比以前更忙碌不堪，多感到極大壓力而無奈，不務「正業」，失去信心。由這些「倒瀉籬蟹」教改而來的重擔和壓力，已危害了我們整個教師隊伍。”

“中大報告指出，香港中小學教師 25.2%患上情緒病，其中 19.7%患上抑鬱症，13.8%患上經常焦慮症，8.3%同時患上這兩種病症，而基準是香港一般市民只有 4.1%患上經常焦慮症。報告估計全港 5 萬多教師中，約有 1.2 萬患上這類情緒病。

當大量教師精神狀態已受到危害，卻要每天在教導大量學生，情況實在令人憂心。”[ML-A1/p.201]

512. Prof Cheng opined that the crisis of the teaching profession was related to the extremely heavy workload and pressure from the education reforms carried out since 1997 more particularly since 2000. He was of the view that the previous education reforms had already become an obstacle to the then forthcoming reform:

“過大精神壓力和離職

爲什麼教師們會這樣廣泛地有情緒病呢?這和不斷增加的工作壓力息息相關。”

...

超高的工作量和教改壓力是整體教師陷入危機的基本原因。”

...

我們的教師隊伍在這樣身心崩潰狀態下，又受着超高工作量的枷鎖，卻要受命承擔今次根本性課改和考改的重擔。你說可以嗎？過去的教改，已成為今次新教改的最大阻力。”

[ML-A1/p.201]

513. Prof Cheng in one of his articles said that all the measures introduced by the 1997 and 2000 education reforms had already created a “bottle-neck” effect. The then forthcoming reform would only worsen the situation:

“顯而易見，最後所有這些課改考改的新措施，都會經過樽頸效應，連同舊教改所致的危機，成為更巨大的壓力，進一步重重壓迫在瀕臨崩潰的教師們身上。” [ML-A1/p.202]

514. He concluded by saying that since one important precondition for successful education reform, namely support from teachers, did not exist, the proposed reform of the academic structure was a revolution that lacked the precondition for success:

“沒有條件成功的革命

課改和考改的成功，完全要依靠教師。但是，整體教師隊伍已因前段教改，陷入樽頸困境，身心出現危機，已危害到整體的學生教育質素。這次課改和考改，將更進一步擾動及改變中學教師的教學工作及學校教育生態，大多數教師將失去原有的專業基礎，重新找尋基點。短時間內，人心惶惶，既憂慮殺科裁員，掙扎於校內湧現求存的政治生態，又要花大量時間，重新準備教學及接受培訓。對目前整體教師身心危機，可說雪上加霜，摧毀整個教師隊伍和每天對學生的教育質素。何來人和？

請容我進一言，我們沒有課程和考試革命的條件！”

[ML-A1/p.204]

### **Evidence of Prof Morris**

515. Prof Morris gave evidence that he received a telephone call from Mrs. Law during the period that these articles were published in Ming Pao [Day5, p.104, lines 20-21].

516. Prof Morris testified:

*“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.*" (emphasis added)  
[Day5, p.105, lines 6-14]

517. Prof Morris's testimony of what he said in reply is that:

*"On that occasion I said, whether or not I agreed with him -- and I didn't agree with all of his views at all -- was quite irrelevant, but I would defend his right to be able to express his views, and again if she had any views on what he wrote she should talk to him directly or she should arrange to publish her own views in response."* [Day5, p.105, lines 17-24]

518. In the witness box, Prof Morris honestly said that he did not remember whether Mrs. Law used the word "fire", though he recalled that Mrs Law expressed the opinion very strongly that the HKIED "should not employ him". [Day7, p.155, lines 11-14]

### **Evidence of Mrs Law**

519. Mrs. Law in her fourth witness statement says that:

"I have no recollection or record having called Prof. Morris in or

about November 2004, and I have never asked him not to employ Prof Cheng.” *[W2/p.135, para. 91, the fourth witness statement of Mrs Law dated 14.5.2007]*

520. However, when Mrs Law gave evidence in-chief, she was able to say positively that she did not have any telephone conversation with Prof Morris in which she asked him to dismiss or sack Prof Cheng. *[Day29, p. 85, line 23 to p.86, line 2]*

521. She was also able to say that she had never said why the HKIED should employ him or that HKIED should not be employing him. *[Day29, p.86, lines 3-5]*

522. However, upon being questioned by the Chairman and on further cross-examination, it was revealed that Mrs Law did call Prof Morris and express dissatisfaction with articles written by HKIED staff. *[Day 31, p.99, line 21 to p. 100, line 11].*

523. It is only when she was answering questions from the Chairman that Mrs Law honestly admitted that she did call Prof Morris from time to time when she read objectionable articles:

*“Chairman: So the situation was you came across certain articles, the content of which you find incorrect or objectionable, whatever, and presumably that would have been an author from HKIED, otherwise you wouldn’t have called Prof Morris?”*

*“Answer: Presumably, yes.”* [Day31, p.100, lines 6-11]

524. Further, Mrs Law admitted that at one point, Prof Morris already said to [her] that there was very little he could do about what his professors write. [Day31, p.99, lines 21-23]

525. Mrs Law recognised that her telephone conversation might give Prof Morris the impression that she was not happy about the criticism expressed in articles written by HKIEd staff. This is reflected in her exchanges with Chairman:

*“The Chairman: Mrs Law, is it possible that in your dialogue or conversation with Prof Morris, that you might have given him the impression that you were not too happy about these criticisms in the articles published by HKIEd's teaching staff? Is it possible? Perhaps from the way or your style of talking or that sort of thing?”*

*“A. Well, maybe. I'm a forthright person. You know, I call a spade a spade.”* [Day29, p.86, line 25 to p.87, line 7]

526. Indeed, the articles written by Prof YC Cheng have been severely critical of education policy both in the past and present. This was recognised by Mrs Law when she said that *“That's Prof YC Cheng's style”*. [Day31, p.39, lines 10-13]

527. During cross-examination by Mr Lee SC, Mrs Law told the

Commission that she really preferred negative articles, like those written by Prof YC Cheng, **not to be** published, but she recognised that she was not able to achieve this and she had to face the reality , albeit reluctantly:

*“Mr Lee: That sort of attitude taken by Prof Cheng in these articles would be contrary to what you call your constant or recurring theme, right? Because you wanted teachers, particularly the professors in teacher education providers, to take a positive attitude, otherwise they may deter would-be entrants from entering into the profession?”*

*“Answer: Yes, but of course in the pluralistic society, we cannot stop all these views, so what we can do is try to redress the imbalance by encouraging more positive articles to be placed and we did that by having three weekly columns also starting from the 2004/05 school year.*

*“Mr Lee: But of course, you would have preferred that these articles either don't be published at all or at least be toned down. You would prefer it, wouldn't you?”*

*“Answer: Preference is one thing, dream is one thing. We have to face the reality and I think in my eight years, I have never lost any sleep over these criticisms.” (emphasis added)*

[Day31, p.40, lines 1-19]

528. Eventually, when she was cross-examined by Mr Lee SC, Mrs Law could not conceal her hostility towards Prof YC Cheng by equating him with Mr. Cheung Man Kwong of the PTU, of whom Mrs Law has been severely critical throughout her testimony:

*“Mr Lee: ...Can you find a more prominent and consistent offender to your theme than Prof Cheng?”*

*“Answer: Your friend.”*

*“Mr Lee: My friend?”*

*“Answer: Your friend, Cheung Man Kwong.”*

...

*“Mr Lee: I suppose in your eye, you would put him in the same category of the Honourable Cheung Man Kwong?”*

*“Answer: You were only asking me for example. Okay. Yes.”*

[Day31, p.118, lines 3-19]

529. It is Mrs. Law’s assertion that such a telephone call could not have happened during the consultation period of the “3+3+4” reform on course structure:

*“Given that during the period of consultation, we had to keep an open mind and because we received views from all directions,*

*some supportive and others critical and others opposing, we made a consolidated analysis of all the views and we responded to these individually at the end of the consultation exercise.”*

[Day31, p.128, lines 20-25]]

530. This argument is disingenuous. There is no logic in the proposition that a consultation period will cause Mrs. Law’s normal practice to be suspended. As a “*forthright person*” who “*calls a spade a spade*”, she would have reacted in her normal way to newspaper commentaries that were critical of education policies during consultation periods, especially towards the views of someone who had expressed such forceful and direct criticism of the education reforms. [Day29, p.87, lines 6-7]

531. Given Mrs. Law’s previous evidence that she did call Prof. Morris up about matters relating to staff publishing materials [Day31, p.100, lines 6-11], it is submitted that this phone call did take place. This is especially so given the very strong impact of Prof. Cheng’s criticism of the educational reforms caused to the EMB in the School Principals’ Conference. During examination-in-chief, Mrs Law admitted that:

*“You know, given that the very strong reactions at the principals’ conference, which was in a way quite unexpected to many of us, because the conference was attended by a thousand principals and they were sort of at least from the media reports the following day, it seems that **the principals were up in arms and***

*that was a sort of a warning sign to us in EMB that we must do something about the situation.*” (emphasis added) [Day29, p.89, lines 9-16]

532. Mrs Law also acknowledged the Prof YC Cheng’s criticism in the School Principals’ Conference and the impact on the EMB was caused by him:

*“I responded to the issues and in fact, responded to a number of speakers at the principals’ conference, not particularly targeting at Prof Cheng, but of course there was the common thread, that is everybody was concerned about the workload of teachers.”* (emphasis added) [Day29, p.85, lines 15-19]

### **Submissions**

533. Mrs Law, as the PSEM, requested the President of the HKIED to dismiss a member of the Institute on the basis that he had written very critical articles about the education reforms.

534. This is another blatant attempt to interfere with both academic freedom and intuitional autonomy.

### **(VIII). PHONE CALL TO PROF MORRIS ON 21.4.2005**

#### **Evidence of Prof Morris**

535. Prof Morris’ testified that, on 21.4.2005, he received a telephone

call from Mrs. Law:

*“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.” [Day5, p. 109, line 23 to p. 11, line 15]*

536. According to Prof Morris, Mrs. Law said that:

*“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.” [Day5, p. 111, lines 7 to 9]*

### **Evidence of Mrs Law**

537. Mrs. Law agreed that she called Prof. Morris around this time and that the date seemed to be about right but she said that she did not recall mentioning either Mr. Ip Kin Yuen or Prof YC Cheng. [W2/p.136 paras. 92 and 96 of Mrs. Law's fourth witness statement

dated 14.5.2007]

538. However, she asserted that the purpose of the phone call was to find out respective numbers of people joining the VDS and CRS:

*“I called Prof Morris to find out how many have joined the VDS and how many he would expect to join the CRS.”* [Day29, p.71, lines22-24]

539. Mrs Law also claimed that she knew the deadline for the VDS had already expired on 18.4.2005. [Day29, p.72, lines 8-9]

540. Her explanation of making the telephone call was that she was interested to know *“because HKIEd had a target of retiring 65 academic personnel. If the number of volunteers did not meet this target, then more staff would have been laid off under the CRS. Compulsory retirement was not welcomed and could invite backlash for staff which was the case with the MIRS in 2002.”* [W2/p.136, para. 94 of Mrs. Law’s fourth witness statement dated 14.5.2007]

541. Mrs. Law also claimed that she phoned Prof. Morris to find out the number of staff in the CRS because it had financial implications for government“to the extent that certain members had already applied for the VDS then the financial implication for the CRS would be less”. [Day29, p.69, line 24 to p.70, line 2]

542. This assertion is unfounded. The difference between the amount

of pension of payable under CRS for staff having early retirement and amount of pension payable if staff were to retire at the prescribed age are all borne by the HKIEd but not the EMB or the Administration . S.4(ha) of the HKIEO provides:

“The [HKIEd] may, in furtherance of its objects, pay to the Government the cost of pensions, allowances, gratuities and pension benefits payable by the Government under section 5 of the Pensions (Special Provisions) (The Hong Kong Institute of Education) Ordinance (Cap. 477) for service under the [HKIEd] by a person transferred from service under the Government to service under the [HKIEd]”.

543. Mrs. Law has confirmed in her evidence that *“I think it’s the lump sum pension, the HKIEd would have to reimburse the Government if they retired prematurely... .”*. [Day31, p.66, lines23-25]

544. It is further confirmed by a letter dated 30.11.2004 from Mr. Norman Ngai, the Vice President (Resource & Administrative Services) to Mr. Michael Stone concerning Compulsory Redundancy Scheme, it clear states:

*“Insofar as funding to finance the implementation of the schemes is concerned, we understand and confirm that, in accordance with an agreement between the Government and the HKIEd in 1995, the HKIEd will pay the Government the costs of any additional statutory pension payable to our staff who are*

*otherwise will meet from within its reserves and the appropriate UGC grants already approved for the HKIEd the costs of ex-gratia and other payments in connection with the implementation of the schemes.” (emphasis added)*  
[ML-A3/p.62-63 at p.63]

545. According to the testimony of Prof Luk, 18.4.2005 was the deadline for department heads to nominate their colleagues for the CRS [Day12, p.50, lines 8-10]. There was a committee meeting scheduled to finalise the list within HKIEd. That meeting was set for 27.4.2007 [Day12, p.50, lines 12-14]. Once the committee had made its final decision on the listing, the list for CRS would then be submitted to EMB for its approval [Day12, p.51, lines 1-4].

546. Therefore the deadline of 18.4.2005 was not a firm one.

### **Submissions**

547. **Mrs Law, as the PSEM, requested the President of the HKIEd to dismiss members of the Institute on the basis that he had written very critical articles about the education reforms.**

548. **This is another blatant attempt to interfere with both academic freedom and intuitional autonomy.**

## **(IX). QUESTIONING THE EMPLOYMENT OF DR. WONG PING**

## **MAN IN NOVEMBER 2004**

549. Dr Wong Ping Man is a senior lecturer, currently the associate professor, in the Department of Educational Policy and Administration of HKIEd.

550. It is Prof Morris' evidence that in November 2004, when he met Mrs. Law at the HKIEd's graduation ceremony, Mrs. Law questioned about Dr. Wong Ping Man's employment:

“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?’” [Day5, p. 103, lines 6-9]

551. Prof Morris said in his evidence that he was quite taken aback at that time. But before he could answer, somebody else came up to say hello, because that was sort of a public setting they were in. [Day5, p. 103, lines 9-12]

552. It is Prof Morris' evidence that he was astonished by it at that time because Dr Wong Ping Man is his first PhD student that he supervised at Hong Kong U and Dr. Wong was not somebody he ever associated with having critical or making strong critical comments about educational policy. Prof Morris said, unlike the conversation

in 10.2002, he did not interpret this as an explicit attempt for him to sack them. However, he thought that given his previous conversation, it was implicitly to that effect. [Day5, p. 103, lines 17-20]

553. Prof Morris' astonishment regarding the fact that Dr. Wong was mentioned was also shared by Prof Luk.

554. In fact, Prof Luk's testimony was that he was puzzled as to why Dr Wong Ping Man was mentioned. Firstly, Prof Morris could not have misheard Dr Wong Ping Man's name since he was unique in HKIEd. Secondly, Dr Wong Ping Man was a mild gentleman who could not have offended Mrs Law:

*“Wong Ping Man was my MEd student. I think he's unique in the Institute, and having been my MEd student at Chinese University before he went over to HKU to become Paul Morris's PhD student, so he was the only colleague that both of us have had as a student. Both of us know him very, very well.*

*He's a very upright gentleman, but very mild, soft spoken, well-mannered, and totally unoffensive. He's a very keen educator, but he doesn't publish very much in the newspapers. He publishes well in the academic journals, but he doesn't publish very much in the newspapers and he's certainly not known as a critic of the education reforms of EMB. So we really were very puzzled about this name.*

*On the other hand, given that both of us know him well, it is not likely that Prof Morris would have misheard the name.”*  
(emphasis added) [Day12, p.61, lines 3-19]

555. Given Prof Morris’ relationship with Dr. Wong Ping Man, namely his first PhD student, it is not possible that Prof Morris had misheard what Mrs. Law said. There are two possible scenarios that we submit:-

(1) Mrs. Law might have confused Dr. Wong Ping Man (黃炳文)

with Dr. Wong Ping Ho (王秉豪) who was the “*leader of the lecturers’ union*” and “*he had appeared in LegCo on a number of occasions speaking out against the budget cuts...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*” [Day12, p.62, lines 5-12] Such opposition could give rise to hostility on the part of Mrs Law;

(2) Mrs. Law was aware of Dr. Wong Ping Man’s involvement in the activities of Small class teaching which was evidenced by the fact that Dr. Wong Ping Man was one of the signatories of an invitation letter of Small Class teaching seminar. [ML-A3/p.68] Given Mrs Law’s negativity against small class

teaching, Dr Wong Ping Man's involvement in small class teaching could have offended Mrs Law.

## **J. CONCLUSION: MERGERS, THE PUBLIC INTEREST AND DUE PROCESS**

556. This Commission of Inquiry is not established to determine whether a merger of the HKIEd would be in the best interest of the community. And it is to be expected that people will have different views on that topic.

557. Both Prof Morris and Prof Luk do not believe that the merger of the HKIEd with another university will be beneficial to Hong Kong's education sector or the community as a whole. They believe that the way forward is for the HKIEd to be given a university title so that it will be able to provide specialised education courses and will be able to attract good quality students who are determined to become teachers. This conviction has been shared by many stakeholders and educators including Dr Simon Ip and many council members of the HKIEd and members of HKIEd's staff and students.

558. Prof. Li has claimed in this Inquiry that it was in the best "interest" of the public to have "some form" of merger between CUHK and HKIEd.

559. Clearly the Government is entitled to this view on this topic and try to bring about a change from the *status quo*. However, this should be undertaken through a proper consultation with all the stakeholders and the public so as to ensure that any change in policy is really in the best interests of the community.

560. The critical issue is whether Prof. Li has followed established procedures for making or changing educational policies.
561. The established procedures in Hong Kong require extensive public consultation resulting in policy proposals being presented to ExCo for endorsement. It may then be necessary for the Government to propose a bill to the Legislative Council to amend the HKIEO or even to repeal it if it be thought desirable to merge the HKIEd with another tertiary institution in Hong Kong.
562. In the past, new educational policies have been initiated by the Education Commission, ACTEQ and of course EMB itself, often through statements made by the CE in his annual Policy Address.
563. An instructive example of how policy in the university sector was initiated, despite strong opposition, and eventually implemented was the change in the 1990s from a 4-year course for undergraduates in CUHK to a 3-year one. The Government desired to have a common length of undergraduate programmes of three years in all UGC funded institutions. The proposal was put to the Education Commission, which engaged in a wide public consultation and, despite very strong opposition from some sectors of community, especially CUHK which had a 4-year course, the Commission recommended a 3-year degree course for all universities. This proposal then went to ExCo and was subsequently implemented by

legislation.

564. Another possible source for initiating a policy change in higher education is the UGC. It is evident from the documents that the HKIED had repeatedly requested UGC to play the role of a facilitator in relation to possible mergers [IEEM1/p.70; EMB 5/p.152]. It would have been wholly appropriate in 2003/2004 for the EMB via UGC to have requested the Niland Committee to consider the future of the HKIED and specifically to consider the feasibility of a merger between, say, HKIED and CUHK.

565. But instead of going about it in an open and transparent manner, the SEM chose to force a merge on the HKIED by stealth and subterfuge. The HKIED was first encouraged and subsequently pressured through cutback of student numbers to initiate a merger with CUHK.

566. Further, attempts were made to steer the Council of the HKIED towards merger with CUHK during the first Beas River Retreat in April 2004. But the Council roundly rejected the idea of a merger with CUHK after the second Retreat.

567. There are, however, signs that through Government's control of the membership of Council, there appears to be a long term strategy to fill the Council of HKIED with more members from CUHK's Council. As an EMB document explains:

*“It is considered that nominating members of the CUHK Council to HKIEd Council would bring long-term benefits to the latter”.* [EMB-5/p.573]

In time, the implementation of this strategy may create a *defacto* merger.

568. It is disingenuous to suggest, as has been done, that all those who desire to see the HKIEd retain a high degree of autonomy are merely trying to promote their self interest whilst Prof. Li is the sole defender of the public interest.

569. The future of teacher education in Hong Kong clearly must be based on public interest, but this can only be ascertained through rational and open debate as well as well-informed professional judgement. The SEM has failed to initiate such a debate, but has instead attempted to impose his personal will on the education sector.

570. The clear message that has emerged in this Inquiry is that the existing long-established processes for initiating changes in public policy in the education sector have not been used when they should have been.

Dated the 2<sup>nd</sup> day of June 2007.

Martin Lee, SC

Hectar Pun

Jocelyn Leung

Counsel for Prof Morris and Prof Luk

## APPENDIX

### (I). GENERAL BACKGROUND OF THE ESTABLISHMENT OF HKIED

571. It is undisputed by all parties that:

*“The HKIED was established in accordance with the recommendations of Education Commission Report No. 5 (“ECR5”), the objectives of which were to merge five teacher training colleges which were then under the management of the Government through the Education and Manpower Department and to set up an autonomous and independent university level institution dedicated to teacher training and teacher education. The intention was that Hong Kong should be served by an all-graduate and all-trained teaching profession and ECR5 concluded that the establishment of the HKIED would be the best way of achieving this. At that time, the University of Hong Kong and the Chinese University of Hong Kong had their own Faculties of Education but the policy makers of the day did not think it appropriate to merge the then 5 teacher training colleges with either of those Faculties of Education. Successive Secretaries for Education and Manpower supported an autonomous and independent HKIED until about mid 2002, shortly after the commencement of the second term of Mr. Tung Chee Wah as Chief Executive of the Hong Kong SAR Government.” [W1/p.186, para. 2: Witness statement of Simon Ip dated 27.3.2007]*

## Education Commission Report No. 5 (ECR5)

572. Prior to 1994, non-graduate teacher education in Hong Kong was provided by the four Colleges of Education and the Institute of Language in Education.

573. There were a number of concerns arose about the situation and these were considered by the Education Commission. The main concerns were clearly articulated in ECR5 dated June 1992:

- (a) *“It has been put to us forcefully by teacher educators and student teachers that, compared with other institutions of higher education, the status of the colleges and ILE is administratively and academically anomalous. They have told us that because the colleges and ILE are run directly by the Government, their staffing, equipment, management and funding reflect civil service systems and procedures rather than what is academically desirable or necessary. These administrative problems, we feel, could probably be solved even within the context of the civil service, given a suitable policy initiative. But the disadvantages in academic terms of direct Government management appear to us to warrant a change of status.”*  
[ML-A2/p.265, para. 5.3]

- (b) *“The academic standard of teacher’s certificates awarded by the colleges has up to now not been subject to external review in the same way as other higher educational awards. Because of new demands being placed on the education system, and higher*

*community expectations of our schools, it is important that the quality of the teacher's certificate should attract the same wide recognition as other academic awards. As the history of Hong Kong Polytechnic and the technical institutes has shown, academic quality can develop best outside the civil service context.*" [ML-A2/p.266, para. 5.5]

- (c) *"A second argument against continued operation of the colleges and ILE by the Government relates to public perceptions. In the past, many entrants to the colleges had qualifications well above the threshold level. With the expansion of tertiary education places, qualifications have tended to drift towards the threshold. If we are to provide schools with the quality of teachers they need to meet community expectations, the colleges must be able to compete more equitably with other institutions which enroll bright school-leavers."*

[ML-A2/p.266, para. 5.6]

- (d) *"We have therefore concluded that, if the teacher education programme is to undergo the same kind of academic growth and development as has already been achieved by the tertiary and technical education programmes, the colleges of education and ILE must be separated from the civil service. We have considered three options: creating a 'teacher training university' under the UPGC; linking each teacher training institution to an existing tertiary institution; and converting the*

*colleges and ILE into an autonomous institute of education outside the UPGC system.” [ML-A2/p. 267, para. 5.7]*

574. With respect to establishing a teacher training university:

*“This option, proposed by some educational bodies, would mean creating a full scale tertiary institution offering courses in education, all or mostly at degree level. **This may become feasible one day**; but since nongraduate teacher preparation will continue to play an essential role for many years, the proposal is premature at this stage. If a ‘teacher training university’ were created, it is not clear where nongraduate courses would be provided. It is important not to disrupt our existing programmes of teacher education.” (emphasis added) [ML-A2/p.267, para. 5.8]*

575. Thus it eventually recommended establishing an institute of education:

*“We therefore consider that the most positive option would be to upgrade the colleges and ILE into **an autonomous Institute of Education**, operating initially at sub-degree level, but offering a proportion of courses at degree level once a positive academic assessment makes this feasible.” [ML-A2/p.268, para. 5.13]*

576. The Commission also at para 5.21 of ERC5 “recommended the development of a comprehensive policy on the professional training and development of teachers, which will aim for the steady progress

towards an all-trained teaching profession” This is important at Mr C H Tung’s policy speech refers to “graduate” and “trained”. There are still many untrained teachers. [ML-A2/p.268, para. 5.13]

577. It should be noted that this recommendation to create the Institute of Education rather than a university of education was premised on the then prevailing policy that only a small proportion of teachers in primary schools would be graduates.

578. The ECR 5 explained as follows :

*“Since an all-graduate profession will take some time to achieve, nongraduate initial training and professional development will continue to be needed. We therefore envisage that for some years the main work of the Institute will be at sub-degree level. But, in addition, the Institute should aim for an academic standard which as soon as practicable will enable it to offer some degree courses. **This will strengthen academic quality throughout the Institute, and enable it to compete for well qualified staff and students**”.* [ML-A2/p.273-1, para. 6.3]

*“The aim of the upgrading process should be for the Institute of Education to reach, initially, a standard comparable to a tertiary institution offering primarily sub-degree work while planning to introduce some degree work. The next stage would be the actual introduction of some degree courses.”* [ML-A2/p.273-1, para. 6.4]

### The Establishment of HKIEd and the HKIEd Ordinance, Cap. 444

579. The recommendations of the ECR5 were subsequently approved by ExCo and this resulted in the dis-establishment and merger of the four Colleges of Education and the Institute of Language in Education to create the Hong Kong Institute of Education (“HKIEd” or “the Institute”) by the Hong Kong Institute of Education, Cap. 444 (“HKIEO”).

580. One of the key aspects of the HKIEO is that “*the objects of the Institute are to provide teacher education and facilities for research into and the development of education*”: section 3(2) of the HKIEO.

### The University Grants Committee (“UGC”)

581. In 1996, the HKIEd became a UGC-funded institution.  
[ML-A2/p.274]

582. This meant that the funding responsibility for the HKIEd was transferred from the Education and Manpower Bureau to UGC with effect from December 1996. [W1/p.80, para. 7 : Professor Morris’ statement dated 23.3.2007]

583. As one of the eight institutions under the UGC, the HKIEd became a **statutory autonomous body** that is bound by the UGC Notes on Procedures [ML A2/p. 277 to 278]. The procedures state that the higher education institutions funded through the UGC enjoy

**academic freedom and institutional autonomy** in five main areas:

- (a) **selection of staff;**
- (b) selection of students;
- (c) curricula and academic standards;
- (d) acceptance of research programmes; and
- (e) allocation of funds within the institution. [ML A2/p.278, para. 1.22]

584. The following extracts of the Notes on Procedures relating to institutional autonomy are pertinent:

*“...the essential point is that the institutions are legally entitled to **freedom of action** in managing their affairs within the restraints of the laws of Hong Kong”. (emphasis added) [ML A2/p.278, para. 1.21)*

*“The institutions have **unfettered rights in the selection, promotion, and dismissal of their staff.**”(emphasis added) [ML A2/p.278, para. 1.22(a)]*

585. It should be noted that on joining the UGC, the then Secretary General of UGC confirmed that personnel matters (other than salaries), including recruitment, promotion, deployment or dismissal of staff are matters within institutional autonomy and it is not appropriate for UGC to involve itself directly in these matters in respect of the UGC-funded institutions. [ML-A2/p. 289, para. 29]

### **Role of the HKIED**

586. The role of the HKIED was confirmed and elaborated by the UGC in 2004 when they undertook the role differentiation exercise between the eight UGC-funded institutions. [W1/p.80, para. 7 : Professor Morris' statement dated 23.3.2007]

587. The importance of role differentiation among different institutions in Hong Kong was affirmed by the UGC in its report entitled "Hong Kong Higher Education To Make a Difference To Move with the Times" published in January 2004. Paragraph (a) of the Executive Summary states that:

".... 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 efficiency." [EMB 5(1)/p.193]

### **An "All Graduate, All Trained" Teaching Force**

588. In his policy address in 1997, the then Chief Executive of the HKSAR ("CE"), Mr. Tung Chee Wah, stated that in future all new teachers would be graduates and professionally trained. This policy required the HKIED to substantially change its profile from that envisaged by ECR5. In his Policy Address in 1998, the CE affirmed that:

*"I announced in the 1997 Policy Address our goal of requiring*

*all new teachers to be trained graduates. As a first step we will develop the Hong Kong Institute of Education into a degree-awarding teacher training institute. Currently the Institute offers 2,400 Certificate of Education places. In the 1999-2000 academic year we will start progressively to upgrade these places and provide instead places at degree or above level at both the Institute and other tertiary institutions.” [1998 Policy Address: p.32, para. 94]*

589. Specifically it had to phase out most of its sub-degree programmes and replace them by degree and postgraduate programmes. This task was achieved and the proportion of programmes at degree level and above in 2007 was 80% compared to 27% in 2000.

### **Government Policy on HKIED**

590. Since the HKIEO was enacted, the basic goal outlined by ECR5 was to develop an autonomous independent HKIED remains unchanged.

591. Whilst there has been no change in government policy with regard to the HKIED, there has been a significant change in the way that it has been treated. As Dr. Simon Ip, the founding Chairman of Council, expressed in his witness statement, *“Successive Secretaries for Education and Manpower supported an autonomous and independent HKIED until about mid 2002, shortly after the commencement of the second term of Mr. Tung Chee Hwa as Chief Executive of the Hong Kong SAR government”*. [W1/p.186, para. 2:

Witness statement of Simon Ip dated 27.3.2007]

592. This change in approach occurred when Prof Li became SEM and his views were expressed to the Council Officers at the lunch on 19 July 2002. As Dr. Ip explained:

*“From what was said by Professor Li, I formed the clear impression that the Government had decided to change its policy towards the HKIEd and the issue was not open to consultation or discussion. From the Government’s standpoint, it was only a matter of implementation and the affected parties were expected to proceed with such implementation. Hence my reference in paragraph 5 of my Statement dated 27<sup>th</sup> March 2007 to the policy change being presented as a fait accompli.”* [W1/p.190-1, para. 3: Supplemental Witness statement of Simon Ip dated 30.3.2007]

593. An internal memo in EMB on the role of HKIEd underlines the positive attitude towards the HKIEd in mid 2002:

*“Notwithstanding the phasing out of its sub-degree Certificate in Education programme in the 2001-04 triennium, we are of the view that the HKIEd should be allowed to operate at a similar scale in the next triennium given its dedicated mission and purpose-built campus for teacher education. Assuming the current level of resources can be maintained for the HKIEd in the next triennium, we suggest for your consideration that a good portion of these resources should be allocated to additional places for the BEd(Language) programme in view of its*

*established strength in this area and the currently acute demand for language teachers. However, we also see a strengthened role for the HKIEd to provide more professional upgrading courses (PUCs) for serving teachers. In this regard, we suggest that the HKIEd be required to allocate additional resources for the operation of PUCs to support language teacher education and the re-tooling of teachers for the education and curriculum reform.” [EMB 3(1)/p.15]*

594. To date, there is still no evidence of any policy change as such and this was affirmed by the speech given by the then CE at the 40<sup>th</sup> anniversary banquet of CUHK on 6 December 2003 where he stated that:

*“I do not believe that eight institutions are too many for Hong Kong. What is important is that they fulfill their different roles.”*  
[ML-A1/p.105]

*“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.”* [ML-A1/p.106]

### **The Upgrading of HKIEd**

595. From 1997, as part of the process of upgrading, the HKIEd went through an extensive programme of course development, internal

restructuring, and changes to its staff profile in support of the Government's new policy of upgrading the HKIEd. One indicator of this is that in seven years the percentage of staff with a PhD has increased from 18% in 2000 to 83% in 2007.

Key steps in this process involved a very successful Teaching and Learning Quality Process Review (TLQPR) Report in June 2002 which recommended, *inter alia*, that the HKIEd should now be considered for self-accrediting status. [ML-A1/p.7, para. 1]

596. This was followed by an institutional review under the aegis of the UGC at the end of October 2003, which recommended that the Institute be awarded self-accrediting status. This was granted in March 2004. [ML-A1/p.8, para. 2]

597. In 2005, an independent survey of 700 school principals by the City University of Hong Kong found that, when comparing at the same levels of teaching, the HKIEd's graduates were preferred to those of other teacher education providers by their employers. [W1/p.82, para. 8 of Professor Morris' statement dated 23.3.2007 and [ML-A2/p.301, paras. 10 to 11]

598. In 2006, the HKIEd was reviewed as part of the UGC's Research Assessment Exercise. Its research index has increased from 11% in 1999 to 31% in 2006. This means that, despite the fact that it is a teaching-oriented rather than research-oriented institute, it has nearly

tripled the percentage of research active staff in just a few years.  
[ML-A1/p.8]

## **(II). INSTITUTIONAL INTEGRATION, MERGER, DEEP COLLABORATION AND 2+2 IN HONG KONG**

### **Introduction**

599. In his evidence, Prof Li contended that his actions towards the HKIED were generally based on the implementation of established government policies, especially those policies arising from the Sutherland Report, March 2002.

600. From this he specifically argued that his long-term plan was to promote some form of merger and replace the Institute's four-year BEd degrees with 2+2 degrees. [Prof Li's testimony, Day 33 – p.18-19, Day 34 – p.25-26, 33-34, 128] He also stated that he believed that the Sutherland Report *'has not gone far enough'*. [Day 34, p.86, line 9-10]

601. The replacement of BEds with 2+2 degrees would essentially mean removing its subject-based departments in English, Chinese, PE, Art, Music, Mathematics etc. and thus halving the size of the Institute

602. Three key documents define the nature of policies relating to the HKIED over the last five years. These are:

- (a) a report entitled "Higher Education in Hong Kong" published in March 2002 ("the Sutherland Report") [EMB 5(1)/p.5 to 92]

- (b) a document entitled “Hong Kong Higher Education – To Make a Difference To Move with the Times” published by the UGC in January 2004 “the Role Differentiation Document ” [EMB 5(1)/p. 191-213]
  
- (c) a report entitled “Hong Kong Higher Education – Integration Matters” published by the Institutional Integration Working Party of the UGC in March 2004 (“the Niland Report”) [E2/p.165 to 240]

**The Sutherland Report – Higher Education In Hong Kong (March 2003)**

603. Lord Sutherland was commissioned by the UGC to undertake a report on the future of higher education in Hong Kong.

604. The Report contains three basic proposals for long-term policy.

605. The first relates to the need for institutions to have “*a clear diversity of mission and practice*”. This quest for diversity was then followed up by the role differentiation exercise. [EMB 5(1)/p.53, para. 6.7)]

606. Secondly, it recommends re-defining governance systems in institutions to make them “fit for purpose”. [EMB 5(1)/p.55, para. 6.23)]

607. Thirdly, and most importantly for the purpose of the Commission of Inquiry, it recommends collaboration, and specifically states that:

*“Strategic collaborations will be an essential part of shaping the future. Institutions will take advantage of geographical proximity to encourage local collaborations and form strategic international alliances. Such collaborations and alliances will be stimulated by a variety of needs to develop and exploit niche markets, in pursuit of international excellence.”* [EMB 5(1)/p.54, para 6.17]

608. Then the Report goes on to make specific reference to the HKIEd:

*“Institutions will facilitate the movement of students within Hong Kong and the UGC will support this by more flexible funding arrangements. More specifically, the Hong Kong Institute for 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 (BEd) 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-based courses from the Hong*

*Kong University of Science and Technology.” [EMB 5(1)/p.54, para. 6.20]*

609. The Report further states that:

*“More generally, such strategic links will allow institutions to be more focused upon their areas of strength and excellence”. [EMB 5(1)/p.54, para. 6.21]*

610. It is of paramount importance to note that Lord Sutherland himself did not advocate the merger of HKIEd when interviewed in 2005.

With regard to HKIEd:

*“He affirmed the move to make teaching a graduate profession and to set up an institute, at the same level as Hong Kong universities, to provide such teacher education”*

and stated that:

*“The decision to move in that direction was fundamentally right as well as far-sighted.”*

*“In my own way of thinking, this place (HKIEd) is a university. It offers its own degrees and it is self-accrediting. That is the defining characteristics of the maturity that you need to be operating at university level.”*

*“If you look at Hong Kong’s university system, it is important that they accept that there will be a variety of roles and they will not all be trying to be the Harvard of Southeast Asia.”*  
[ML-A3/p.138]

611. What is self-evident from the above is that:

- (a) The Sutherland Report never used the word or recommended “merger” or even “federation” between institutions. It refers solely to collaborations and strategic collaborations/alliances.
  
- (b) The Sutherland Report only recommends **complementing**, not replacing the Institute’s BEd programmes with 2+2 degrees.

612. The Sutherland Report was not even interpreted in UGC as signaling a policy shift towards the phasing out of HKIEd’s BEd. programmes, but rather a desire to promote collaborative programmes to train secondary teachers, which is a relatively small percentage of the HKIEd’s activities. This is evidenced by what the Chairman of UGC wrote to the CE.

613. The Chairman of UGC clearly reflected this view when she wrote to the CE on 3 December 2003 to explain to him the main recommendations of the Niland Report prior to its publication. She stated, when illustrating how institutions should pursue different roles, that:

*“The HKIEd’s role needs review. It is excellent at pre-primary and primary education. But for secondary ‘core’ subject areas (like Science, Maths, etc.), these should be done in deep collaboration with other universities, such as HKU, CUHK and BaptistU”* [EMB 5(1)/p.163-2]

614. Further evidence that the Sutherland Report did not signal a policy to phase out BEds is provided by the former Permanent Secretary for Education and Manpower (“PSEM”), Mrs. Fanny Law Fan Chiu Fun (“Mrs Law”). In October 2002, it was recorded that:

*“PSEM said that graduates with excellent language skills tend to be less interested in joining PGDE and the teaching profession, and 4-year BEd(Lang) would attract students with fairly good language skills and commitment in teaching to become language teachers.”* [EMB 4(1)/p.379]

615. She also stated in an email dated 20 October 2003 that:

*“I believe the BEd(English) students are far better.”* [EMB 4(1)/p.412]

616. However, the position of EMB clearly changed as a result of the SEM’s personal viewpoint. As Susanna Cheung explained on 23 October 2003 with regard to her briefing of the SEM in relation to the 2005-08 triennium:

*“On the category of ‘teachers’, SEM had eye on the FYFD places we proposed to allocate for BEd (Primary & Secondary), say, 630, 820 and 910 in 05/06, 06/07 and 07/08 (though major share is for boosting training for English language teachers). SEM asked that we should reconsider reducing the number of FYFD places as far as possible. He was of the view that, BEd programmes (even for languages) normally accept academically*

*less proficient students. He also expressed that he'd prefer to allocate more TPG places (PGDE). I cautioned that, even by reducing FYFD places (BEd) from the category of 'teachers', there's no guarantee that these places would be distributed to, say, Arts faculties in universities (say, English, Chinese). Besides, Arts graduates (especially English) would not necessarily become English teachers and this might jeopardize the aim of developing a team of better qualified English teachers, as recommended by SCOLAR."* (emphasis added) [EMB4(1)/p.414]

617. It is important to note that the SEM's personal view was first expressed in 2002. The first cohort of BEd (Primary) students of the HKIEd only graduated in 2002 and its first cohorts of BEd (Secondary) and BEd (Language) graduated in 2004 and 2005 respectively. Clearly the SEM's view was not supported by evidence of their performance.

618. Notwithstanding the lack of a policy basis for the phasing out of BEds and their replacement by 2+2s, this re-surfaced in 2006 when, following the 17 April dinner, the UGC was informed that:

*"... SEM advises that we need to reduce the student numbers of HKIEd's own teacher education programmes so that they can be redeployed for 2+2 programmes. For instance, if the 2+2 programme with CUHK is successful in attracting good students, we can encourage this development by allowing CUHK to increase its intake for such programmes. If this is not feasible,*

*the student numbers released by HKIEd can still be re-distributed to the education faculties of other universities.” [EMB 5(2)/p.599]*

619. The attempt to promote 2+2 degrees **at the expense of the HKIEd** was also evident in the formal “advice” he gave the UGC on 4 April 2006 when explaining why the HKIEd’s FYFD places should not be increased. He stated:

*“We note that 2+2 double degrees, in particular those jointly provided by CUHK and HKIEd, are very successful in recruiting good students. Although at this stage we may not project with accuracy the actual demand for teacher education places under the 334 regime, in view of the general trend, we do not see any need to increase HKIEd’s BEd or PGDE (Secondary) intake. These will be the general directions in the near future” [EMB 5(2)/p.424-8A]*

620. This assertion was false and misleading in two ways. Firstly there was no way of knowing the students’ entry level in April as they had not yet taken their ‘A’ levels. Secondly, the claim turned out to be false when the JUPAS provided the data in July. The entry grades of first cohort of the joint programmes with CUHK and LU were not better than those of the HKIEd’s own programmes for English language teachers as shown below.

Programme	AL Score (Excl. UE and Chin)	AL Score (Incl. UE and Chin)
BEd English – Primary (HKIED)	8	9.4
BEd English – Secondary (HKIED)	7.2	8.9
BA Eng Studies & Edu (HKIED & CUHK)*	6.7	9.2
BA Eng & Edu (HKIED & LU)*	5.3	8.3

\* collaborative programmes

[ML -A3/p. 87]

621. Furthermore, the recommendations of the Sutherland Report to pursue strategic collaboration were followed up. Since 2001, the HKIED has had a joint degree programme with HKUST which prepares teachers in the areas of Mathematics, IT and Science. These teachers are all being prepared to work in the secondary school sector. Other collaborative ventures that the Institute has pioneered are those with the Hong Kong Polytechnic University for English language teachers which began in 2001 and a similar programme developed with Lingnan University in 2005. A full list of such collaborative programmes is provided in [EMB 4(1)/p.436].

**The Role Differentiation Document (January 2004)** [EMB 5/191-213]

622. Following endorsement by both the UGC and Government of the

Sutherland Report, the task of defining the different roles of UGC-funded institutions was carried out.

623. The introduction to this 2004 document states:

*“The Higher Education Review made many substantive recommendations at a strategic level on role differentiation and excellence. It has now become clear that the UGC needs to draw the roadmap – the compass for which is the Higher Education Review”*. [EMB 5(1)/p.194, para. (a)]

624. The 2004 document states in para 23: *“The UGC has recently completed a review of the role statements of the eight institutions under its purview. ...In drawing these up, the UGC has deliberately sought to develop the roles the institutions have set themselves.”* In para 25 it goes on to say: *“We have agreed revised role statements with the eight institutions.”*

625. This evidence conflicts with that given by the SEM in answer to Martin Lee’s question: *“...in the year 2004, I believe, there was a role statement drawn up for HKIEd?”* *“That was a role statement drawn up by HKIEd.”* [Day 35, p.149, line 17-19]

626. In the Role Statement document, HKIEd is given the following role:

*“offers a range of programmes leading to the award of certificates, first degrees and postgraduate diplomas, which*

*provide suitable preparation for a career in education and teaching in the pre-school, school and vocational training sectors.*” [EMB 5(1)/p.208, para. (a)]

Clearly, the role differentiation exercise did not encourage HKIED to phase out its own degree programmes.

627. The expectations of the HKIED with regard to collaboration are also clearly explained:

*“delivers degree programmes relating to secondary education whenever possible through strategic collaborations with other local tertiary institutions”.* (emphasis supplied) [EMB 5(1)/p.208, para. (e)]

628. The only other reference to collaboration states:

*“pursues actively deep collaboration in its areas of strength with other higher education institutions in Hong Kong or the region or more widely so as to enhance the Hong Kong higher education system”.* [EMB 5(1)/p.208, para. (h)]

629. It should be noted that this latter statement was common to all eight UGC-funded institutions.

630. As with the Sutherland Report, no reference is made to merger or federation, it just promotes collaboration and strategic alliances. Thus, for example, it states at [EMB 5(1)/p.199, para. 12]:

*“... ..each institution should aspire to be top in the region at*

*what it and the UGC agree on is its role. All eight institutions should be part of the system in their respective roles. The roles of the institutions should describe an interlocking system, which should be diversified, with different types of strengths or functions predominating in different institutions. The UGC believes that this 'nurturing' of the whole system will be ultimately be the more productive for Hong Kong."*

631. Similarly, in [EMB 5(1)/p.200, para. 15], it states:

*"Hong Kong needs a higher education sector with institutions operating in distinctive but collaborative and complementary roles. Each institution should have unique areas of strength which will add value to the overall sector. The UGC must ensure that each institution is faithful to its role."*

632. And in [EMB 5(1)/p.200, para. 16], it states:

*"The UGC is committed to this extended role. It is equally committed to an open and constructive dialogue with institutions about the development of Higher Education in Hong Kong. Its intention is to help create a clear framework within which institutions continue to have the freedom to act and develop in their own way"*.

633. In brief, the role differentiation exercise confirmed the strategic direction of the Sutherland Report and made it clear that the UGC expected to see the HKIEd offer its own degrees and to develop

collaborative programmes for secondary school teachers with other institutions. The latter is something which the HKIED has fully supported and implemented. It should be noted that secondary programmes constitute only around 25 percent of the Institute's activities and there is no indication whatsoever that HKIED's core activities of BEd programmes for primary and early childhood teachers are expected to become 2+2 programmes. Prof Li's statements that HKUST had '*pulled out*' from the joint programme and that there is no other joint programme (other than the one between HKIED and CUHK) are both false [Day 34, para. 35]. On the advice of UGC, the one with PolyU was closed and a planned programme with CityU was not implemented so as to provide the FYFDs for the programme with CUHK.

### **Submissions**

634. It is submitted that in reality, Prof Li was not interested in HKIED developing collaborative programmes with CUHK despite the stipulations of the Deep Collaboration Agreement that ruled out any changes of governance for at least six years. [ML-A2/p.246]

635. This is best illustrated in the attempt of HKIED to get approval in 2006 for a collaborative programme in PE with CUHK. The request was rejected, not because there were insufficient details as claimed, but because SEM was, according to Mr. Michael Stone, the Secretary General of UGC, "*more interested in the progress of the wider deep collaboration, rather than this individual request*". The

SG of UGC wished SEM “to be aware of this request” and the fact that he had “asked EMB to consider it sympathetically”. [U8/p.236]

636. In a similar vein, Mr. Michael Stone wrote to Mr. Raymond Wong, Permanent Secretary for Education and Manpower on 3 November 2006 with regard to the PE proposed joint programme. He stated:

*“I believe there is merit in this proposal. .... I therefore support the proposal on its own merits. However, I am aware that, to date, there has been very disappointing progress in the much bigger deep collaboration between the two institutions which is supposed to be being taking forward. This must be a relevant factor when considering this proposal. On this broader question, I understand that in fact there has recently been some significant movement. The two sides are in active, positive discussions about taking forward deep collaboration at the institutional level.”(emphasis supplied) [U8/p.238]*

637. The Chairman of UGC also indicated that they were seeking more than programme level collaboration when she referred to “*Intensified Deep Collaboration*” and “possible firmer tie up between CUHK and HKIEd” in her letter of 11 August 2006 where she asked the SEM for his advice following the failure to secure any agreement following the dinner of 17 April 2006. [EMB 5(2)/p.597 to 598]

#### **The Niland Report – Integration Matters (March 2004)**

638. The Institutional Integration Working Party was established by the

UGC following a request from the Administration to consider the question of institutional integration in Hong Kong generally and specifically to examine the key potential benefits and drawbacks as regards a merger of the CUHK and HKUST. [E2/p. 225, para (a)]

639. Essentially the Working Party was asked to undertake the task of defusing the tension arising from proposed CUHK/HKUST merger that had been proposed in October 2002 by the SEM. [E2/p. 225, para (b)]

640. The Niland Report defined the various forms of institutional integration, encouraged deep collaboration, and specifically stated that the merger between CUHK and HKUST might be viable at some point in the future but it “should not be further explored for the present”. [E2/p.214]

**641. At no point in this Report were mergers of institutions recommended as a policy for adoption.**

642. Further, the Terms of Reference of this Working Party allowed it to consider the question of institutional integration generally. However, the Report avoided any specific reference to the HKIEd despite very clear indications from the HKIEd that they desired the UGC to undertake the role of considering any questions of integration related to the HKIEd. This was because the Institute wanted the matter to be considered by an independent body through

an open, objective and transparent process, such as that which was subsequently undertaken by Niland with regard to CUHK and HKUST. HKIEd wanted to avoid having to deal directly with the EMB in this matter. [E2/p.177, para. 1.11]

643. Three documents clearly demonstrate the HKIEd's expressed desire for the UGC to play its legitimate role as an independent buffer and facilitate any discussions as to its future and integration. The relevant extracts are quoted below:

*"If the issue of a merger (or more precisely a hostile takeover) is to be explored further, we would request that the UGC be involved in the deliberations and that any decisions should be informed by an objective and independent review."* [IEEM1/p.70]: HKIEd's paper on "A Merger of the HKIEd with a Comprehensive University: an Initial Response" by Prof. Paul Morris dated 6 June 2002.

*"We would like to suggest that the optimal means for any further consideration of the questions related to collaboration and integration would be best initiated by the UGC. We would therefore like to recommend that the UGC facilitates such a discussion and invites all interested tertiary institutions to explore the potential possibilities with regard to collaboration and integration. Further, we would like to suggest that if there is a desire amongst some institutions to further pursue such discussions, then you consider involving a senior international*

*scholar to serve as a facilitator”* [EMB 5/p.152]: Letter dated 28 February 2003 from Professor Paul Morris to Dr. Alice Lam, Chairman of UGC.

644. A third relevant document, that is before the Commission of Inquiry, is a draft of a letter dated 17 September 2003 intended for the UGC, prepared by Prof Morris:

*“.....On behalf of the Council’s focus group, I would like to indicate that we would consider it valuable for the working party to consider extending its remit to advise on the longer term position of the HKIEd and that we would be very willing to discuss at an appropriate stage how this process might be facilitated. We would wish to underline that this does not constitute a commitment to change the status of the HKIEd and in the final analysis, the Council’s position will be determined by reference to achieving what is best to help the Institute achieve its mission.”* [IEEM24/p.83]

645. It should be noted that the above correspondence does not indicate an intention to merge, but rather a desire for the UGC to play a role in any process of considering institutional integration. The UGC did not respond, but it is evident that the Niland Report did not consider the situation of the HKIEd and its final report makes no proposal with regard to the HKIEd. If it had done so, then a policy proposal could have emerged through a wholly legitimate process.

**HKIEd's Strategic Plan 2006-2012** [ML-A3/p.1 to 20]

646. Prof Li frequently asserted that the HKIEd was complacent, had accepted the status quo and had no plans other than to continue to do what they already did and demand university title. Similarly, the Council Chairman opined that the Institute was 'drifting' under Professor Morris' leadership. This is manifestly false.

647. The Strategic Plan mapped out the Institute's plans for the six years from 2006 to 2012. It was based on extensive consultation with stakeholders. It was set in the prevailing policy context and was unanimously endorsed by the Institute's Council (including the representative of SEM) in February 2006. This is the Institute's approved blueprint for the future. Three statements from the Strategic Plan are pertinent:

- (1) *To diversify and strengthen our programme offerings, especially through deep collaboration with the Chinese University of Hong Kong in secondary teacher education; [ML-A3/p.9]*
- (2) *To achieve our goal of retitling the Institute to 'University', in line with the community's aspiration to upgrade the teaching profession [ML-A3/p.15];*
- (3) *To extend and strengthen our strategic collaboration with other tertiary institutions and educational organizations in mainland*

*China and overseas in order to develop joint degree programmes, facilitate the exchange of academic staff, encourage credit transfers and promote student exchanges*  
[ML-A3/p.19].

648. In brief, the Institute has a clear plan for future. That plan mirrors closely current policies in higher education in Hong Kong, especially in terms of extending collaboration. It also clearly signals the desire for university title and it has been fully endorsed by the Institute's governing body. To suggest, as Prof Li and the Chairman of the HKIED Council have done, that the Institute had no plan, blueprint or strategy for the future is manifestly false.

649. In summary, the documents and evidence clearly demonstrate that:

- (5) There is not and has never been a government policy to reduce the number of tertiary institutions by merger or even federation.
- (6) There has been a policy to promote deep collaboration which the HKIED has actively implemented. In fact, HKIED has pioneered joint programmes. New initiatives were rejected by EMB/UGC.
- (7) There is no policy basis to justify phasing out the BEd programmes and replacing them by 2+2 programmes. This action is based on the personal wishes of the SEM.

(8) SEM is not interested in deep collaboration at programme level. He is only interested in a merger which is dressed up in expressions such as “wider” and “intensified” deep collaboration at “institutional level”.