

# Commission of Inquiry on Allegations relating to the Hong Kong Institute of Education

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## **Section 1: Introduction**

1. The Commission has been appointed (a) to ascertain the facts relevant to the 3 allegations set out in the Terms of Reference (“the Allegations”) [CB/1/1], (b) to ascertain, on the facts as found, if there has been any improper interference by SEM or other Government Officials with the academic freedom or the institutional autonomy of the HKIED, and (c) on the basis of the findings in (a) and (b) above, to make recommendations, if any, as to the ways and manners in which any advice by the Government to the HKIED, with respect to the exercise of the HKIED’s powers or the achievement of its objects, might be given in future.
2. Paragraphs (a) and (b) of the Terms of Reference require fact finding. To assist the Commission in this process, we shall endeavour to set out the more salient events which have been covered in the evidence given in this Inquiry in a chronological sequence. Part of this would form the background to the matters in dispute which are the focus of the Inquiry.
3. The three Allegations spanned a period from October 2002 to April 2005. Whilst the First and Third Allegations are specific as to the time when the relevant events occurred (viz. January and June 2004 respectively), the Second Allegation is not. The Commission has, however, received particulars as to the dates to which that allegation relates. These show the relevant period to be from 30

October 2002 to 21 April 2005 [CB/5/159].

## Section 2: Process of Fact Finding and Standard of Proof

4. The evidence given by the relevant witnesses on the key issues in the Inquiry is conflicting. To perform its functions, the Commission will have to make findings of primary fact based on the evidence of the witnesses, assisted, to the extent available, by documents. It is a feature of this Inquiry that whilst there is massive documentary material on many things, there is not a single piece of document directly on any one of the three Allegations. Much therefore turns on the credibility of witnesses. In assessing the evidence, the Commission would have regard to inherent probabilities, which is a far better guide than the demeanour of witnesses.
  
5. The standard of proof which the Commission should apply is that of balance of probabilities in the “Re H” sense (see In re H [1996] AC 563). Lord Nicholls of Birkenhead explained (at p.586D-H):  
*“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence... Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when*

*weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established. Ungood-Thomas J expressed this neatly in In re Dellow's Will Trusts [1964] 1 WLR 451, 455: "The more serious the allegation, the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it."*

### **Section 3: Factual Background**

6. The HKIED was established by an Ordinance, The Hong Kong Institute of Education Ordinance, Cap. 444. The effective date of that Ordinance is 25 April 1994. Section 3 of the Ordinance establishes the HKIED as a body corporate, with the objects of providing teacher education and facilities for research into and the development of education.
7. Under section 7, the Council of the HKIED is the executive governing body. The Council consists of the President, the Vice-President, at least one but not more than 3 public officers appointed by the Chief Executive, 3 members elected from teaching staff and administrative staff and not more than 14 other persons appointed by the Chief Executive, at least 5 of whom shall be persons with relevant experience in commerce, industry or a profession in Hong Kong, not more than 3 of whom shall have relevant experience in higher education and not more than 3 to have had relevant experience in education, other than higher education.
8. Dr Simon Ip served as the Founding Council Chairman of the HKIED Council from 1994 until April 2003. He was succeeded by Dr Thomas Leung.
9. Professor Paul Morris joined the HKIED as Academic Deputy

Director in August 2000 (day 6 p.26 line 16-18). He acted as Deputy Director from April 2002 and was formally appointed as Director in September 2002. The title was subsequently renamed as President. His term of office as President is due to expire in September 2007.

10. Professor Luk joined the HKIED as Vice-President (Academic) in 2003. His term expired in April 2007. He had previously worked at the York University in Toronto and was granted no-pay leave by that University to work at the HKIED.
11. Before 1 January 2003, the EMB was responsible for formulation of policy whilst the Education Department (“ED”) was responsible for implementation of education policy. The EMB and ED were merged into the new EMB on 1 January 2003 to strengthen the link between policies formulation and implementation.
12. Professor Arthur Li was appointed SEM with effect from 1 August 2002. He continued to be SEM up to the present [EMB10/4, 7]. Mrs Fanny Law was the SEM from 3 July 2000 to 30 June 2002. As from 1 July 2002 until 31 October 2006, Mrs Fanny Law was the PSEM [EMB10/4, 7].
13. The HKIED is one of the 8 institutions funded through the University Grants Committee (“UGC”). The UGC is appointed by the Chief Executive of the Hong Kong Special Administrative

Region and its remit is, inter alia, to advise the Government on the application of such funds as may be approved by the Legislature for higher education in the universities and designated institutes.

14. The UGC is a non-statutory body, whose terms of reference are as follows.

“(a) To keep under review in the light of the community’s needs –

- (i) the facilities in Hong Kong for education in universities, and such other institutions as may from time to time be designated by the Chief Executive;
- (ii) such plans for development of such institutions as may be required from time to time;
- (iii) the financial needs of education in such institutions; and

(b) To advise the Government:-

- (i) on the application of such funds as may be approved by the Legislature for education in such institutions; and
- (ii) on such aspects of higher education which the Chief Executive may from time to time refer to the Committee.”

15. The roles and functions of the UGC are set out in the Notes on Procedures [UA/1]. The UGC normally follows a triennial planning cycle. 1998-2001 was one triennium. Broadly, the procedure starts with a “Start Letter” from the UGC to the institutions, followed by an Academic Development Proposals (“ADP”) and costs estimates put forward by the institutions.

16. The UGC has stressed that admission of students is a matter for the HKIEd; and the UGC or the Administration will not determine the number of students that the HKIEd may admit. However, the UGC sets a student target number that would receive funding through the UGC. The level of recurrent grants to be provided by the Government to UGC-funded institutions is primarily based on the approved student number targets. Hence, any change in student target numbers will affect the level of recurrent funding.
  
17. In disciplines and professions where the public sector is the major employer (including the teaching profession), the UGC takes advice from the Administration on manpower projections. UGC normally finds it difficult to object to the Administration's projections on manpower requirements (Stone, day 21 p.24 lines 15-19, see also [U2/303] which recorded "UGC was not in a position to challenge the manpower projections"). As a result, the EMB has some direct influence over funding of teacher education institutions ("TEIs"). In the case of the HKIEd, EMB would have direct influence if not control over areas where the HKIEd is either the sole or main provider, such as ECE (early childhood education), sub-degrees in general; primary places and certain key learning areas such as arts and music (Mr Michael Stone, day 21 p.21 line 8 to p.22 line 9).

## Section 4: Chronological Events

18. In this section, we shall endeavour to set out chronologically some of the more relevant events which form the background to matters covered in the inquiry. Those events which are pertinent to the question of merger are marked with “M” in the margin. Those events pertinent to the Second Allegation are marked with “2nd” in the margin. Since the events relevant to the Third Allegation are completely discrete, they will be set out as background in the chapter dealing with the Third Allegation and will not be included in this chronology.

### March 2002

19. In March 2002, the UGC released a report resulting from a review led by Lord Stewart Sutherland, “Higher Education in Hong Kong” (“the Sutherland Report”) [EMB5(1)/5]. M
20. On 30 March 2002, Professor Li, then Vice-Chancellor of the Chinese University of Hong Kong (“CUHK”) attended an interview on a radio program [清談一點鐘] at which he expressed the view that whilst the Sutherland report was to be welcomed, it did not quite go far enough, and should have addressed the question of whether there could be fewer universities in Hong Kong. He also expressed the view that he would like to see mergers of higher education institutions, but that this was a matter on which Government would have to take the lead (see transcript at M

MLA1/103-1 to 103-7). The views of Prof Li as expressed in this program were also publicized in the press on the next day, 31 March 2002 [MLA1/98].

#### April 2002

21. On 3 April 2002, the HKIEd issued a press release in response to media reports on 31 March 2002 quoting Prof Li's views on amalgamation of HKIEd with HKUST and CUHK, stating that it had no plan to merge with any other institution in the foreseeable future.

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#### May 2002

22. On 11 May 2002, Mrs Law was reported in the SCMP as having said that the HKIEd had a "rigid staff structure" which wasted resources by producing a fixed number of teachers for each subject regardless of demand [MLA1/167]. Professor Morris took exception to her reported comments and her using the public media to vent her criticism of the HKIEd. He wrote directly to her in his capacity as Director [MLA1/165]. In that letter, Professor Morris wrote:

*"...As an autonomous tertiary institution, I hope the Governemnt will accept that the organization of our internal structures is a matter for the Institute to decide..."*

23. This drew a conciliatory response from Mrs Law with an apology and an appreciation that Prof Morris did not engage in a public debate [MLA1/168]. Prof Morris' evidence suggests that although

he wrote back thanking Mrs Law for her “gracious reply” [IE4/16], he was still unhappy: the damage was done and Mrs Law did nothing in public to redress that: day 7 p.19 lines 12-13.

24. In the same month, May 2002, Dr Simon Ip met with the then Chief Executive, Mr Tung Chee Hwa, at which the issue of merger of the HKIED with another institution was brought up. It was however no more than the floating of a very initial idea [EMB5(1)/95]. It was however serious enough to prompt the HKIED to prepare “an Initial Response” and for Dr Ip to send this to the Chief Executive, copied to Mrs Law, who was then the SEM [EMB5(1)/124].

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#### June 2002

25. On 24 June 2002, it was announced that Prof Li would be appointed as the SEM.

26. Immediately afterwards, Prof Li set up a number of meetings with various institutions. One of the first appointments he made was for dinner with Prof Morris on 26 June 2002, at the Shatin Jockey Club. That Prof Li ascribed some importance to this is evidenced by the fact, as he explained, that it was the only one which took place over dinner (day 33, p.27 lines 12-14). Prof Morris says that at this dinner, Prof Li expressed the view that the way forward for the HKIED was for it to become a part of CUHK, and encouraged him to think of it as becoming the centre of teacher education in Hong

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Kong and himself as being its head (day 5, p.37 lines 11-21). Prof Li says that he was in a listening mode (day 33, p.27 lines 15-19), and that it was Prof Morris who suggested that the teacher education institutions should come under one roof. In an email from Mrs Law to Mr Y C Cheng (Deputy Secretary) dated 10 July 2002, reference was made to Prof Li having made a “personal offer” to Prof Morris [EMB5(2)/532]. Prof Li denied that the “personal offer” was a reference to what Prof Morris relayed in his evidence, but was rather a reference to his offer to meet with the Council of HKIEd: day 34 p.106 line 3 to p.111 line 24.

27. On 27 June 2002, the HKIEd Council met and discussed the issue of a possible merger for the first time (Morris, day 4 p.40 line 16). The notes of the meeting are at [IEEM1/61 et seq]. One of the points noted was that a merger might mean the HKIEd taking over other faculties of education as the HKIEd in its present form can best serve the needs of the community. It was also noted that any merger would defeat the objectives of Education Commission Reports No. 4 and 5 which recommended that a single institution for teacher education would best suit Hong Kong’s requirements and situation. It was agreed that it would be of utmost importance for the Council to ensure that the Institute’s mission and values would not be diluted or compromised under any form of merger, and that resources intended for teacher education should be protected.

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July 2002

28. In July 2002, Dr Simon Ip hosted a lunch for Prof Li at the offices of Johnson Stokes & Master. The lunch was also attended by Mr Alfred Chan (then Deputy Chairman of the HKIEd Council) and Mr Anthony Wu (then Treasurer of the HKIEd Council). There is a note of the discussion kept by Dr Ip at [E2/112]. The note recorded Prof Li as saying that the merger “was going to happen”. Dr Ip’s evidence is that Prof Li said words to the effect that if the HKIEd did not consent or co-operate, it would be “raped” (day 16 p.65 line 13). Significantly, Dr Ip’s understanding of the use of the word is that it was merely a rather inflammatory or unfortunate use of language, which in itself did not bother him; what he was annoyed about was the Government’s abrupt announcement of the decision to merge the HKIEd with another university (day 16, p.66 lines 6 to 21). Dr Ip says that he was inwardly annoyed and did not show this (day 16, p.67 line 23). Prof Li says that he thought Dr Ip was annoyed, but it was because he told him the HKIEd needed a lot of improvement and basically needed to pull its socks up (day 33, p.144 lines 15-25). Mr Alfred Chan remembered that Prof Li used the word “rape”, although he was not able to recall the full sentence in which the word was used and did not have the impression that it was meant to be threatening (day 27 p.8 line 21 to p.9 line 20). Mr Anthony Wu made a statement in which he said he could not remember the word “rape” was used: [W1/303-3].

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29. There is some uncertainty as to when Dr Ip relayed this conversation to Prof Morris. The timing of this is of some importance in understanding Prof Morris' frame of mind. His own evidence is that after he became aware of Prof Li's remarks, he became "extremely suspicious of every action that related to the IEd" because he saw those actions as a pattern of achieving the goal of raping the HKIEd": day 5 p.48 line 7. The evidence is that Prof Morris was on leave at the time, and the first occasion Dr Ip met with Prof Morris after July 2002 was at lunch on 23 August at Toscana in the Ritz Carlton (day 16 p.70 line 20 to p.71 line 9; W1/190-7). Dr Ip says that he would have given a full briefing to Prof Morris as soon as possible, either before the lunch on 23 August or at the lunch (day 16, p.70, line 7 to p.72 line 6). Prof Morris' evidence is that he was told of this conversation at a lunch at the Ritz Carlton (day 5 p.47 line 25) but cannot remember when (day 10 p.62 line 6). Prof Moore's evidence is that he was or would have been told of this by Prof Morris in early 2003 around the time when Dr Ip stepped down as chairman [para. 6(ii) W1/17; day 23 p.157].

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30. What is also of note is the meaning Dr Ip and Prof Morris attributed to the reference to "rape". Dr Ip's evidence is that he took Prof Li to mean that unless the HKIEd willingly agreed to a merger and took steps towards that end, a merger would be thrust upon it: day 16 p.65 lines 18-21. It was a rather inflammatory use of language – an unfortunate choice of metaphor: day 16 p.66 lines

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6-10. Contrast the evidence of Prof Morris on day 5 p.47 line 2. He said he understood this to mean that if the HKIED did not merge “it would be made non-viable”.

### September 2002

31. On 23 September 2002, Ip Kin Yuen asked Mrs Fanny Law, who had agreed to write a foreword for his book, to complete it before 6 October [EMB11/18].

### October 2002

32. In October 2002, Prof Li (who was by then the SEM) organized a tea party for the media. Prof Li was reported to have expressed his views on merger of tertiary institutions and his approach of “權在我手，先禮後兵”. He was also quoted to have stated that “政府會削減該校資源 [N2/42], and 會否陰乾嗰啲大學? 大學撥款唔係我決定，係就好囉。” [N2/49]; [N2/41-78; IE4/36]. Prof Li’s evidence was that in September 2002, he was requested by Prof Ambrose King (VC of CUHK) and Prof Paul Chiu (VC of HKUST) to make a clear statement that Government would support a merger of the two institutions: day 33 p.107 lines 2-4. M
33. Dr Ip wrote to complain of the comments attributed to Prof Li at the tea party which were perceived to suggest that the HKIED was a third class university [IE4/33]. This drew a response from Prof Li clarifying that he did not mean to refer the HKIED as a third class university, and that he had already sent a press statement to all

media to correct the mis-information: [IE4/35].

34. On 29 October 2002, a seminar on small class teaching was held at the HKIEd. A report of the event appears on the 30 October 2002 issue of the Sing Tao Daily at [MLA1/170]. 2nd
35. In the morning of 30 October 2002, there was a telephone conversation between Mrs Law and Prof Morris which is the subject of the first particularized allegation under the Second Allegation. This is dealt with in Section 6 below. 2nd
36. In the afternoon of 30 October 2002, Dr Lai was the principal speaker at a press conference held at the HKIEd where severe criticisms were made of the EMB's failure to implement the "all graduate all trained" policy. See the newspaper reports on 31 October 2002 at [MLA1/178-186]. 2nd
37. Mr Ip Kin Yuen deposed to a telephone conversation he had with Mrs Law around this time: day 20 p.7 lines 2-3. Mr Ip recalled the main point to be that Mrs Law was questioning him as to why the Hon Mr Cheung Man Kwong had been invited to the small class teaching seminar. Mrs Law's evidence is that she cannot recall this telephone conversation: day 29 p.46 line 18 to p.47 line 3. 2nd
38. In a letter dated 31 October 2002 Mrs Law wrote to Prof Morris to complain of the press conference [MLA1/187], and in that letter 2nd

noted with regret that there was no mention of the press conference throughout the telephone conversation in the preceding morning.

39. In a letter dated 4 November 2002, Prof Morris replied to Mrs Law's letter of 31 October 2002, defending the holding of the press conference. 2nd

#### November 2002

40. On 4 November 2002, Mr Ip Kin Yuen and Mrs Law exchanged emails regarding Mr Ip's invitation to Mrs Law to a seminar on small class teaching in November [EMB11/21-1]. The seminar was held on 19 November [EMB11/21-2]. 2nd
41. On 28 November 2002, Prof Li attended the HKIED's council meeting, at which he commented that it was time for the HKIED to think strategically about its future positioning and development opportunities in the context of the Government's financial situation, the recommendations in the Higher Education Review and the demand for teachers; that it was not wrong to start dialogues with other institutions to consider the pros and cons of working together for the same goal, that it was up to the HKIED to consider and decide on the partner as well as the form of any future collaboration, and that the Government was prepared to put in additional resources to facilitate a merger or amalgamation as it would achieve long term financial savings and benefits [IEEM1/77]. At this meeting, the Council agreed to consider M

forming a task force to consider the future development of the HKIEd. Subsequently, the establishment of the task force was approved by circulation [IEEM1/148]. The task force subsequently formed 3 focus groups: the Focus Group on Long-term Role and Positioning, the Focus Group on Resources, and the Focus Group on Institute Governance.

42. On the same day, Prof Morris invited Prof Li and Dr Alice Lam of the UGC to lunch; Dr Lam recalled that Prof Morris had said that gaining self-accreditation for the HKIEd would facilitate its equal status in the discussion of merger or deep collaboration with other institutions [W1/224]. M

43. IBM, which had been commissioned to study possible merger options open to the HKIEd, submitted its report [IE25/2]. M

#### January 2003

44. The discussions between HKIEd and CUHK on future collaboration started at about this time: see Prof Morris's briefing notes [MLA1/235 at 236]. M

#### February 2003

45. On 28 February 2003, Prof Morris sent a letter to Dr Alice Lam of the UGC, suggesting that it would be best for the UGC to initiate further consideration of questions related to collaboration and integration; the HKIEd Council had "always approached these M

issues with an open mind”. The letter recommended that the UGC facilitated a discussion on the questions of collaboration and integration and invited all interested tertiary institutions to explore the potential possibilities [EMB5(1)/152].

#### April 2003

46. In April 2003, the UGC’s Teacher Education Sub Committee produced a paper setting out the proposed timetable for the Institutional Review of the HKIED. It was proposed that the review panel would be formed in early April 2003; that it would visit the HKIED in late June 2003, and that it would submit its report to the UGC in early August 2003 [U8/278].

47. On 26 April 2003, Mrs Law sent an email to Ms Susanna Cheung (the PAS(PDT)), saying “I have serious reservation about giving HKIED university status. Since we are gong to have a new SG/UGC in June, I suggest UGC should withhold the institutional review of HKIED until the new SG/UGC has time to review the situation and develop a strategy for institutional merger” [EMB14/1094]. Susanna Cheung relayed this view to the UGC: [EMB14/1098].

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#### May 2003

48. On 21 May 2003, Prof Morris sent an email to Dr Leung saying, in the context of a comment that it appeared that Mrs Law had requested a delay of the HKIED’s Institutional Review, that “Fanny

has taken every opportunity to promote criticism of the IEd, with the Primary School being the most recent example. She has also been very critical of us at meetings with School Principals...I suspect she would like to keep us in a low status position because it will always allow the Govt to explain the failures of their Educational reform policies on the quality of teacher education...” [MLA2/533]. We will address the question of whether Prof Morris’s view was justified in Section 8 below. For present purposes, we would point out that it appears that by about this time, Prof Morris had formed the perception that Mrs Law was critical of the HKIEd and promoted such criticism.

#### June 2003

49. The Hong Kong Examinations and Assessment Authority released overall results for the Language Proficiency Assessment Test 2003 on 2 June 2003 [EMB12/395]. On 8 June 2003, Prof Morris emailed Dr Leung [E2/274], noting that the press coverage of the results had been extremely damaging to the HKIEd, and pointing out that further data would soon be published and it would be up to the EMB as to how to present and interpret it. He did not seem optimistic about this, as he said that “It is clear that EMB have up to now tended to maximize anything negative about the IEd – largely in an attempt to put pressure on us to merge. It would be very helpful if Arthur and Fanny were to realize that such pressure is no longer necessary and it could be counter-productive. Why would CUHK wish to merge with a low-status institution

constantly subjected to media ridicule?” Subsequently, Prof Morris described the Language Proficiency Assessment Test (“LPAT”) incident as a design on the part of the EMB “to maximize the negative media portrayal” of the HKIED (email to Dr Leung of 8 October 2003 [MLA2/532]). Whether he was justified in doing so will be addressed in a later section of these submissions. In any event, it was an incident which led Prof Morris to consider that the EMB or Mrs Law was using to promote criticism of the HKIED. Indeed he described it as the incident which was the most damaging to the HKIED (day 7, p.43, lines 23-24).

50. The email of 8 June 2003 to Dr Leung was sent from Prof Morris’s “confidential personal account”. He had also said that “With regard to the longer term picture, I agree with you that we have little choice but to pursue discussions on the merger prospects. It is invaluable that you have good communications with...Arthur and Fanny. I have instructed my colleagues to draw up a paper spelling out the pre-conditions we would be seeking to take this further. If what emerges is a genuine arrangement, which ensures a high degree of autonomy for the HKIED, it will have my full support” [E2/274].

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51. On 19 June 2003, there was a staff forum attended by about 600 staff of the HKIED [ML-C/39; IEEM1/222], at which the issue of the imminent deficit faced by the HKIED was discussed. The anticipated deficit was said to be mainly caused by (a) projected

declining student numbers, (b) reduced student unit costs, and (c) anticipated removal of front-ending loading; all of which were expected to bring about a reduction of 30-40% in income in the coming 4 years.

### July 2003

52. On 10 July 2003, the UGC wrote to SEM seeking the Administration's advice and guidance on the broad planning parameters and specific manpower requirements for certain disciplines and professions, to plan for the 2005/06 to 2007/08 triennium [U2/25]. The UGC requested information regarding "the required number of teacher education places by school level and by programme type in respect of all KLAs" (key learning areas).

### August 2003

53. On 19 August 2003, the Chief Executive met with the UGC. In the brief which was prepared by the EMB for the meeting, it was said that the HKIED had a wish to explore further collaboration with other institutions, and a possible merger with the CUHK [EMB5(1)/155-1 at 155-2]. Prof Li says that he endorsed this at the time and the basis of the information would have been from his dinner with Prof Morris back in June 2002, from Prof Morris's letter to Dr Lam of February 2003, and from discussions with Prof Morris about institutional review (day 33, p.85 line 15 to p.86, line 16).

54. On 20 August 2003, the UGC had a meeting with Prof Li. One of the topics discussed was institutional integration and the progress of the Niland study. Prof Li said that he adopted an open mind on institutional integration, but at the same time, in view of the scarcity of public resources, it had become increasingly important for institutions to seek collaboration with one another in order to develop a critical mass and build up extra capacity for further advancement; institutional integration was a way to achieve this. [U1/343 at 345]. Clearly, Prof Li was keen on promoting institutional integration. At the same meeting, Prof Li suggested (in the context of the proposed Institutional Review of the HKIED) that careful consideration had to be made to the HKIED's future role. M

#### September 2003

55. On 1 September 2003, Prof Morris and Dr Leung met with Dr Lam and Mr Michael Stone of the UGC for lunch. UGC's note of the occasion [E2/145] records that Prof Morris and Dr Leung were "keen on looking at the idea of merger". On whether the HKIED would be willing to carry out a merger with or without self-accrediting status, both Prof Morris and Dr Leung unequivocally confirmed yes to the former; Dr Leung was still fairly keen on the latter but Prof Morris was much less so. M
56. It appears that following on from the lunch, Prof Morris drafted a letter to Dr Lam, suggesting that the scope of the Niland study be expanded to cover not only a possible merger between the HKUST M

and CUHK, but also “to advise on the longer term position of the HKIED”, and indicated that “we would be very willing to discuss at an appropriate stage how this process might be facilitated” [IE24/83]. It is not certain that the letter was sent out: Dr Leung was asked about it and only had a vague notion that it had been sent out (day 26, p.141 line 4).

57. On 18 September 2003, the Task Force’s Focus Group on Long-term role and positioning met for the third time [MLA1/207]. Amongst the issues discussed was that of merger, and the necessary preconditions for a merger discussion, pursuant to a paper “Critical Issues for Institution Mergers” [IEEM1/204]. A list of issues which would have to be addressed in a merger was agreed upon. M
58. On 19 September 2003, Prof Morris sent an email to Dr Leung, dealing with EMB’s attempts to “maximize any possible negativity with regard to the HKIED” (with particular reference to the LPAT, concluding that “In the final analysis, it may be necessary to speak to Arthur who might intervene if he understood that the current tactic being used by EMB will not help to facilitate the merger he desires...Finally I agree with your view that strategically we should take the initiative now as to wait could result in us being in a very weak bargaining position. We should however not give the initial impression that we have decided to merge and wish to negotiate the terms. I think we should take the line that – we believe that if certain conditions were satisfied, a merger could be M

beneficial and help the HKIED to better achieve its mission” [MLA1/206].

### October 2003

59. On 13 October 2003, Susanna Cheung (PAS(PDT)) sent an internal memo to Irene Young (then the PAS(HE)) with the planning parameters for the 2005/06 to 2007/08 triennium. For teachers, it was proposed that 1330 FYFD (first year, first degree) places would be allocated at the primary level, and 1030 at the secondary; 200 places should be allocated in 2005/06 and 2006/07 for in-service C(ECE) training (Certificate in Early Childhood Education); in-service TPg (taught postgraduate) and B Ed mixed-mode places should be increased to 4,500 and 1,500 respectively; professional upgrading courses would be maintained at 350 fte per annum [U2/81 = EMB3(1)/170]. In respect of the FYFD places (primary plus secondary), the proposal was to allocate 630 in 2005/06, 820 in 2006/07, and 910 in 2007/08. At some point, the UGC was supplied with a copy as informal advice, and used this in formulating the Start Letter of 21 January 2004 for the 2005/06 to 2007/08 triennium.
60. On 13 or 14 October 2003, Dr Leung and Mr Alfred Chan (then the deputy chairman of the HKIED) hosted a lunch for Prof Li and Mrs Law. Mrs Law’s note of the meeting records that the “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

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division of responsibility between the future Institute of Education within CUHK and the existing Education Faculty of CUHK” [EMB5(1)/162]. In the witness box, Prof Morris professed astonishment at seeing this note, because there was no desire within the HKIEd for such a plan, and he had not told about Dr Leung’s request; whilst he had provided the information to Dr Leung to prepare him for the meeting and Dr Leung would have briefed him afterwards, he was not told of any such request made by Dr Leung (day 7, p.133, lines 1 to p.134 line 21). Dr Leung’s evidence was that he did not ask for a plan; rather, he was aware at the time that the Niland study was in progress, and he wanted to know more about the kinds of options for institutional integration so that the HKIEd could have an internal discussion (day 25, p.134 line 20 to p.135, line 11; day 28, p.30 line 16 to p.31, line 3). The meeting was a follow up from the lunch with UGC on 1 September 2003 in which Prof Morris and he had expressed willingness to explore collaboration, and together marked a shift in the approach of the HKIEd, to saying expressly that it was willing to start exploring institutional integration (day 25, p.134, line 18 to p.136 line 9).

61. On 23 October 2003, Ms Susanna Cheung emailed Mrs Law stating that on the category of “teachers” in the specific manpower requirements, Prof Li had “an eye on the FYFD places we proposed to allocate for B Ed (Primary & Secondary)...” and asked whether EMB should reconsider reducing the number of FYFD

places as far as possible. He was of the view that B Ed programmes (even for languages) normally accepted academically less proficient students, and preferred to allocate more TPg places. Prof Li was also recorded to have remarked that he had to strike a balance in the allocation of training places across different disciplines (expressed that there is urgent need for say 150 FYFDs for nursing etc) and also took into account scenario of surplus teacher supply at primary level in the coming years [EMB4/414].

#### November 2003

62. On 14 November 2003, Ms Charmaine Wong of the UGC sent a memo to Ms Susanna Cheung of the EMB, raising concerns at the informal advice expressed in the memorandum of 13 October 2003 regarding student numbers, in particular, the drastic decrease of places in a number of KLAs for the PGDE (primary and secondary) and the B Ed (secondary). A formal advice as to planning parameters was sought [EMB3(1)/183].
63. On 6 December 2003, the Chief Executive (Tung Chee Hwa) gave a speech at a banquet celebrating the 40<sup>th</sup> anniversary of CUHK. He indicated that there should be more collaboration and less duplication, in order to better deploy limited resources; he emphasized that institutional integration could happen “only if both parties are willing” and that the Government did not have any intention to force institutions to integrate [MLB/3].

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### December 2003

64. In December 2003, the UGC’s restructuring and collaboration fund was established, for the purpose of encouraging deep collaboration amongst institutions: Prof Li, day 33, p.153 line 4 to p.154 line 7. M
65. On 18 December 2003, Mr Ip Kin Yuen published an article in Sing Tao Daily, entitled “推卸責任?” [N2/271]. This was the article to which Mrs Law said that she took great exception as revealing a private conversation in the public media and which directly led to a conversation she had with Prof Magdalena Mok. This will be dealt with in Section 6 below. 2nd

### January 2004

66. In January 2004, the UGC published its report “Hong Kong Higher Education – To Make a Difference, To Move with the Times” [EMB5(1)/91]. In it, the UGC declared that it valued 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 committee to extensive collaborate 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” [EMB5(1)/94]. The UGC was further of the view that the level and depth of collaboration and strategic alliances in the higher education system was “distinctly sub-optimal” and that it was incumbent on institutions to do much more in this area (para 22). The role statements of the eight UGC-funded institutions had recently been M

reviewed in line with the UGC's policy on collaboration, and the UGC was also putting in place mechanisms in order to steer the higher education system accordingly (paras 23-25).

67. Meanwhile, Prof Li had to attend a meeting with the heads of the tertiary institutions to tell them about the financial constraints which the Government was facing and which would have to be borne in part by the tertiary institutions (day 33, p.47 line 12 to p.50, line 12). Mrs Law was also present at this meeting. Prof Luk represented the HKIED: see paras 5.3 to 5.6 of his statement [W1/121]. Not surprisingly, the institutions were not too happy at the news.
68. On 13 January 2004, the UGC sent a copy of the Institutional Review panel's report to the HKIED and notified it that the UGC had endorsed the panel's recommendation that it be granted self-accreditation status [IEEM1/125].
69. On 14 January 2004, Dr Lam of the UGC wrote to Prof Li to express concern at the proposed increase in teacher education places, which would have to be at the expense of other disciplines. Given the funding cut in 2004/05 and the "severe consequences" of the proposed increase, she was "most uncomfortable with the notion that the UGC should rob Peter to pay Paul for this activity at this time". There were also doubts as to whether teacher education institutions could cope with the large increase in places proposed

for English and Chinese language [U2/151 = EMB3(1)/239]. Prof Li marked on EMB's copy of the letter "Since UGC knows our intention, ask them for a proposal back. We need to rob Peter + pay Paul but NOT TOO MUCH!"

70. On 20 January 2004, the EMB sent its formal advice on planning parameters for the 2005/06 to 2007/08 triennium [U2/155 = EMB3(1)/243]. The manpower requirements for teachers set out in the appendix were a repetition of those set out in the informal advice of 13 October 2003.
71. On the same day, there was a meeting between Mrs Law and Mr Michael Stone, at which it was agreed on behalf of the EMB that more flexibility would be given to the UGC. Instead of allocating the FYFD places (primary plus secondary) as proposed on 13 October 2003, the proposal was to allocate 700 in each of 2005/06, 2006/07, and 2007/08: this represented both an overall decrease in FYFD places over the triennium and also an evening out of the distribution of FYFDs across the 3 years [EMB3(2)/257-1].
72. On 21 January 2004, the UGC issued its Start Letter to all 8 UGC-funded institutions to enable them to prepare their ADPs for the 2005/06 to 2007/08 triennium [U2/170].
73. On the same day, the telephone conversation which is the subject of the First Allegation took place. This will be dealt with below in

Section 5 below.

February 2004

74. On 5 February 2004, Prof Morris had a meeting with Mr Michael Stone, Secretary General of UGC. Mr Stone had a file note of that meeting: [U2/184-1] in which he recorded that “I asked Morris what his thoughts now were on possible II (Institutional Integration). After venting his spleen about SEM and being told that if they didn’t merge they would disappear, he showed considerable flexibility in possible form of collaboration...” The meeting note also recorded that Prof Morris was very disappointed to see the cessation of the C(ECE) which “came out in blue” (sic). Prof Morris also noted this meeting in an e mail he sent to various colleagues at [MLB/45]. M
75. On 13 February 2004, Prof Li wrote to Dr Alice Lam responding to her letter of 14 January. In this letter, Prof Li indicated that EMB agreed to evenly spread the FYFD places at 700 per annum: [U2/188].
76. On 17 February 2004, UGC issued the second Start Letter: [U2/192 = MLB/46]. The summary of revised UGC 2005-2008 triennium allocation of teacher education places appears at [MLB/48].
77. On 19 February 2004, a meeting was held between TEIs, the EMB and the UGC to discuss FYFDs and KLAs. There are various notes

of the meeting at [MLB/56; 72; EMB3/262].

78. On 23 February 2004, Dr Thomas Leung with Profs Morris and Luk attended a meeting with Prof Li. The meeting was initiated by Dr Leung. Prof Morris' evidence is that this meeting was designed to follow up the concern raised by the telephone conversation on 21 January 2004 (day 9 p.61 lines 1-8). His evidence is that at the meeting, Prof Li reiterated that HKIED should merge with CUHK and explained that this would improve student quality and allow costs to be reduced: W1/90 para. 27. Dr Leung agreed that the meeting was initiated by him, but denied that this was the result of the telephone conversation in January. He said that at this meeting Prof Li encouraged HKIED to start serious dialogue with another institution on collaboration and he also brought up that HKIED could envisage itself to be the dominant teacher education provider: day 32 p.84 line 22 to p.85 line 6; W1/57 paras. 13-18. Prof Luk said (day 13 p.76 line 22 to p.77 line 4) that when Prof Li brought up the idea of bringing the education faculties and departments of other universities together with HKIED, he asked whether he was envisaging a university of education centred around the HKIED, and he immediately said no, that this was not what he wanted to consider. There is some dispute over Prof Luk's and Dr Leung's behaviour at the meeting, but this is probably of little moment.

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79. On 26 February 2004, the minutes of the meeting of the HKIED Council recorded under AOB that the Chairman proposed a

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whole-day retreat be organized, preferably in April, 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: [IEEM1/121-1].

#### March 2004

80. On 1 March 2004, Prof Lorna Chan of HKIEd wrote to Andrew Poon expressing grave concern regarding allocation of teacher education places to kindergarten education and the process by which the decisions were made: [EMB8(1)/61].
81. Between 1 March 2004 and 9 March 2004, Andrew Poon wrote 3 minutes to Mrs Law seeking to increase HKIEd's allocation of ECE training places. He said in his minute M1 "I must admit that the manpower projection on KG teacher training given to UGC last summer was incomplete." [EMB8(1)/64, 208, 67].
82. On 9 March 2004, Prof Phil Moore wrote to Susanna Cheung to complain of reduction in ECE numbers: [EMB8(1)/71]. Susanna Cheung had a meeting with Prof Moore and Lorna Chan and recorded the discussion in manuscript on Prof Moore's letter.
83. On 11 March 2004, the PTU wrote to Mrs Law expressing regret and extreme dissatisfaction on ECE numbers for 2005-08 [EMB8(1)/76]. Mrs Law's evidence is that a decision was made by Prof Li before 12 March 2004 (when she chaired the meeting noted

at [EMB8/223]) that the funding for early childhood education will remain the same in the triennium: day 30 p.71 line 18 to p.72 line 1; in other words, the decision was made immediately after the PTU's letter: day 30 p.72 lines 17 to 21. Prof Li explained that he did not make the decision based on pressure, but on the merits of the case, day 35 p.103 line 17 to p.104 line 6.

84. On 16 March 2004, Prof Morris wrote to Dr Leung noting his intention to proceed with the retreat and informed him of meeting with Prof Kenneth Young of meeting with CUHK (on 15 March 2004) and attached a note of the meeting with the mail: [IE24/84 to 85].

85. In an e mail dated 17 March 2004 from Mrs Law to one Yvonne Ng of EMB, Mrs Law recorded:

“CONFIDENTIAL

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]

(The correct calculation should have been 369-200 and was corrected in Miss Charmaine Wong's email of the same date [EMB3(2)/317].)

86. On 19 March 2004, the HKIEd hosted a school principals'

conference. Prof Li gave a speech at the opening of the conference. There is no dispute that criticisms were voiced at this conference on educational reform. There was also extensive press coverage of the critical comments: [N3/36 to 42-1]. Prof Morris' evidence is that Prof Li called him a few days after the conference. His evidence was that Prof Li was very angry and very upset because the conference was a massive attack on Government's education reform. He alleged that Prof Li said: "You really have no friends. Everybody in EMB is furious. Fanny Law has had a meeting where they have drawn up a list of punishments for the HKIEd." (Day 5 p.74 lines 11-18.) Prof Morris further said that the same message was repeated during a lunch at the Toscana on 7 April 2004: day 5 p.77 lines 15-24. This is denied by Prof Li. Prof Li's evidence is that he called Prof Morris to congratulate him on the good news that the Executive Council approved the HKIEd having self-accreditation status: day 33 p.190 line 13 to p.191 line 2. (As to the date when HKIEd was informed, see also Luk para. 5.34 [W1/128], [IE13/227].) He denied there was any list of punishment. The EMB produced an extract of notes of Senior Directorate Meeting of 26 March 2004: [EMB14/1241]. Mrs Law explained in her evidence that this was a list of positive actions to address concerns that have arisen in the principals' conference: day 29 p.90 lines 1-13. There is also evidence that on the HKIEd side, steps were taken to ensure that the views expressed in the conference websites were not attributed to the HKIEd: [MLA1/131], Prof Moore's witness statement para. 2 [W1/15].

87. On 26 March 2004, representatives of the EMB met with representatives of ECE sector and the Hon Yeung Yiu-chung. It was recorded that the EMB agreed that the overall expenditure on training provision for the ECE sector would remain unchanged in the next triennium: [EMB8(1)/82].

88. The Niland report was published in March 2004: [EMB5(2)/236]. This report discussed 5 different models of arrangements for institutions to focus discussion and debate in Hong Kong. These were:

- the Merger model
- the Federation Model
- The Deep Collaboration Model
- The Loose Affiliation Model
- The Status Quo Model.

It is generally accepted that before the Niland report was published, the term “merger” was used rather loosely to cover different forms of institutional integration or amalgamation. Nevertheless, even after publication of the Niland report, those involved in discussions may, depending on context and the choice of language, use the word “merger” to refer to one or more forms of association, without necessarily meaning to refer to a full merger.

#### April 2004

89. An SMM (Senior Management Meeting) note of 8 April 2004 recorded “P reported the discussion with SEM, who advised that

because of the School Principals' Conference held in late March 2004, PSEM tried to push for changes of student numbers for the Institute, so as to divert resources from IEd e.g. to PolyU to do ECE programmes" [MLA1/134].

90. Dr Leung gave evidence of a telephone conversation he had with Mrs Law in which she informed him that the EMB was going to open up ECE for competition: day 26 p.26 line 21 to p.27 line 7 and p.29 lines 4 to 9; day 32 p.89 line 16 to p.91 line 2. He could not recall the date of the conversation but said it was probably late March/early April and shortly before the retreat: day 26 p.26 lines 21 to 22.

91. On 24 April 2004, HKIEd held a retreat at the Beas River. There was a lot of dispute as to what Dr Leung said at this retreat. The fullest note of his speech appears at [IE26/66] (typewritten version at [IE26/88 to 95]). Katherine Ma also kept notes: [E2/377 to 380]. Discussions were not concluded on that day and another retreat was arranged on 5 June 2004. Dr Leung agreed that he did use the phrase "death by a thousand cuts" but maintained that the phrase was used to paraphrase the like scenario as the unfavourable demographics would result in funding cuts: [W1/62] para. 31. He pointed to the notes which recorded him as listing the 5 models and stating that "extremes are not good for us": [IE26/90], day 26 p.15 line 6 to p.16 line 2 to refute the allegations made by a number of witnesses that he was pushing for a full merger.

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92. In late April, HKIED held further discussions on collaboration with CUHK: see Briefing Note at [MLA1/236]. M

#### May 2004

93. On 7 May 2004, UGC sent the allocution letter to HKIED: [MLB/115].

#### June 2004

94. 5 June 2004 was the second retreat of the HKIED Council. The power point presentation at the second retreat is at [E2/28]. The report on the retreat is at [IEEM2/11]. The report noted that all groups were against a full merger as defined in the Niland report, but all groups agreed that institutional integration under the affiliation/federation model was worth exploring: [IEEM2/12]. M
95. On 29 June 2004, Prof Li called HKIED to speak to Prof Morris but in the end talked to Prof Luk. This is the subject of the Third Allegation which will be dealt with in Section 7 below. M

#### August 2004

96. There was a meeting between Dr Thomas Leung, Dr Edgar Cheng and Prof Li. Katherine Ma's note of the meeting suggests that Prof Li indicated that so long as HKIED decided to go ahead, he would support "which institution with and which model": [IE4/350]. Dr Leung was provided with a briefing note in preparation for the M

meeting: [MLA1/235].

#### September 2004

97. Dr Leung wrote to Dr Edgar Cheng by letter dated 28 September 2004 to suggest that both institutions enter into formal discussions to explore deep collaboration. The letter expressly stated: “As directed by our Council, the integration can be in the form of affiliated or federal models, but not a full merger” [W1/209-1 = IE5/45]. M

#### November 2004

98. CUHK and HKIEd held a second joint meeting on possible deep collaboration: [EMB13/1034-1]. The note recorded that HKIEd side stated that it objected to any “take over” and asked whether CUHK had a plan for full merger. In response CUHK stated that it had no intention to seek a takeover of HKIEd. Rather it envisaged that the likely scenario would be some formula for “an institution within an institution”. M
99. Prof Morris alleges that there was one or more telephone calls around this time which are the subject of the Second Allegation. This will be dealt with in Chapter 6 below. 2nd

#### January 2005

100. PSEM paper no. 1 of 2005 discussed three options on additional training provision for ECE sector in the 2005-2008 triennium:

[EMB8(2)/244]. The meeting chaired by Mrs Law held on 14 January 2005 resolved to go for open tender: [EMB8(2)/243].

### February 2005

101. On 3 February 2005, there was a meeting called by Mrs Law and attended inter alia by Prof Moore. His evidence was that Mrs Law slammed the door on him, day 23 p.173 line 22 to p.174 line 1. This is denied by Mrs Law. Her evidence is that she could not recall having slammed the door and that she had a visitor from Shanghai waiting for her and she had to leave in a hurry: day 31 p.16 line 18 to p.17 line 1.

### April 2005

102. There was a telephone conversation between Mrs Law and Prof Morris on 21 April 2005 which is the subject of the Second Allegation. This will be dealt with in Chapter 6 below. 2nd

### July 2005

103. CUHK and HKIEd signed the Deep Collaboration Agreement dated 9 July 2005: [MLA2/426]. Prof Morris alleges that he had a telephone conversation with Dr Alice Lam in which he was told that Prof Li had looked at the draft and wanted the merger to be the long-term outcome spelt out in the document: day 5 p.93 lines 4-8. Dr Lam's evidence is that she was requested to talk to Prof Li to seek his views and he came back to ask what would all this eventually lead to, could they be more specific? (Day 22 p.126 line M

18 to p.127 line 9.)

September 2005

104. CUHK and HKIEd jointly wrote to UGC with initial proposals on deep collaboration which the 2 institutions wished to explore: [MLA2/681]. UGC consulted Prof Li on the proposal: [EMB5(2)/358]. Prof Li's reply is at [EMB5(2)/390]. This letter sets out Prof Li's views on proposals by the 2 institutions. M

November 2005

105. The HKIEd held its 11<sup>th</sup> graduation ceremony in November 2005. Prof Li telephoned Prof Morris to say he would not be attending and queried the actions he attributed to HKIEd on seeking university title. The conversation was recorded by Prof Morris without Prof Li's knowledge. A transcript of the recording is at [MLA1/164-2].

106. At the ceremony, Dr Leung was reported in the media to have suggested merger as one means of gaining university title: [MLA1/218 to 222]. Dr Leung's explanation for his conduct is on day 26 p.36 line 5 to p.40 line 15. M

December 2005

107. On 17 December 2005, Michael Stone had a meeting with Prof Li. He recorded in his file note that "SEM was in a relatively conciliatory mood and did not wish simply to impose EMB's view"

[E2/244].

March 2006

108. On 21 March 2006, Dr Leung and Mr YK Pang attended a lunch at the HK Club with Prof Li and Mrs Law. Mr Pang said (day 25 p.100 lines 18-20) that the purpose of the lunch was to find out where HKIEd was in terms of collaboration or federation. This is accepted by Prof Li (day 35 p.85 lines 12 to 19). M
109. In an e mail from Prof Morris to Dr Thomas Leung and Mr Pang Yiu Kai, Prof Morris referred to the recent meeting and agreed that the current situation and relationship between HKIEd and EMB could not continue in the longer term. “EMB controls nearly all decisions relating to resources and student numbers and has clearly decided to exert their power to disadvantage HKIEd in whatever ways possible. Clearly EMB is desirous of some form of amalgamation with CUHK. A genuine federal arrangement would bring a number of advantages and is worth pursuing” [MLA1/231]. M
110. On 29 March 2006, Prof Li, Prof Morris, Dr Leung and Y K Pang had drinks at the Hong Kong Club. Prof Morris’ evidence is that Prof Li was pushing to find out what the progress was in moving the deep collaboration towards a merger, and that at that meeting Prof Li indicated his willingness to consider a federal model, day 5 p.128 lines 10-13. Ms Katherine Ma recorded in her note at [E2/367] that “SEM wants to move into federal model; Chair/Dep M

Chair favour fed. Model”. Her note also recorded: “SEM told President and the Management; HKIEd case was discussed at Exco earlier on; CE was dismissive/critical of HKIEd; CE options (1) merger (2) postgrad school only (3) close down; SEM will organize another meeting soon; all + Edgar Cheng + Alice Lam”.

April 2006

111. On 17 April 2006, Prof Li hosted a dinner at the Hong Kong Club. M  
The dinner was attended by Dr Alice Lam, Michael Stone, Prof Lawrence Lau, Prof Kenneth Young, Dr Thomas Leung and Prof Morris. Each of these witnesses gave their evidence of what happened at the meeting. Prof Morris gave evidence (day 5 p.129 line 7) that Prof Li started by saying that HKIEd would not be viable unless it agreed to a merger. The brief to the Chief Executive [EMB5/426; 441] contains a useful record of what took place at the meeting, at least from Michael Stone/Alice Lam and Prof Li’s perception. Prof Li agreed that the message given was that there had to be an agreed endpoint and that had to be some form of merger (not just collaboration in the form of 2+2 programmes): day 35 p.51 line 17 to p.53 line 18.
112. On 27 April 2006, the Chief Executive attended the UGC meeting M  
held at Government House. The UGC’s note of the meeting is at [E2/249]. The note recorded that the Chief Executive specifically raised the issue of HKIEd and was very concerned that in the area of recruiting students, the worst candidates were being attracted.

This was entirely the wrong way round and we needed to think through how to find solutions. He believed one solution was for HKIEd to become entirely a postgraduate institution. He had put this to HKIEd senior management but they had been rather resentful of the suggestion. The Chief Executive said he did appreciate all the difficulties and he asked the UGC to continue to work with HKIEd to improve matters. Michael Stone (who took the notes) said it was practically a verbatim record of what the Chief Executive said: day 22 p.88 line 9.

#### May 2006

113. On 10 May 2006, there was a dinner attended by Dr Leung, Dr Cheng, Prof Lawrence Lau, Prof Kenneth Young, Prof Morris and Mr YK Pang. Dr Leung's evidence is that this dinner was a continuation of the discussion at the dinner on 17 April on matters of deep collaboration and ideas on possible federal arrangement were exchanged. However, it was obvious that there were institutional constraints on both sides and it was agreed that further discussion should be held at an appropriate time in the future: [W1/71] para. 61, day 26 p.100 lines 21 to 25. Dr Edgar Cheng agreed that the subject of federation was discussed but no agreement was reached on the subject: [W2/227].

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#### June 2006

114. On 6 June 2006, Dr Thomas Leung and Dr Edgar Cheng attended a meeting at Prof Li's office. The evidence from Thomas Leung is

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that this was a brief meeting to tell Prof Li that discussions on federation/merger had been put on hold: day 27 p.137 lines 13-24. Prof Li agreed: day 35 p.84 lines 11-12. Dr Edgar Cheng stated in a letter to the Commission that at the meeting, Prof Li was informed that the terms of federation as raised by Prof Morris were found not acceptable [W2/227].

115. On 10 June 2006, Dr Thomas Leung had a breakfast meeting with Prof Morris. Prof Morris alleges that it was at this meeting that Dr Leung told him that unless he agreed to merge, his re-appointment as President would not happen: day 5 p.125 line 24 to p.126 line 5. Katherine Ma's note at E2/335 reads: "SEM – P to tell staff – merger; Do it – I stand beside you; No, I step down next April." For Dr. Leung's evidence, see day 32 p.106 line 16 to p.114 line 14.

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#### August 2006

116. On 4 August 2006, Dr Leung attended a meeting with the Chief Executive. The notes of the meeting are at [EMB5(2)/452]. Dr Leung was recorded to have told the Chief Executive that HKIED had no in-principle problem with the proposal to merge so long as the Institute could continue to enjoy a high level of autonomy and retain its own identity. 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. Ms Katherine Ma's note of the

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debriefing by Prof Morris and Luk of the meeting is at [E2/375]. The note recorded that Chief Executive listened to Dr Leung's views (inter alia) that merger would only relocate problem and merger would not work politically; and "SEM – not an honest broker". Prof Morris' evidence is that Dr Leung told him that it was not the Chief Executive's agenda to force a merger and that he (Dr Leung) had explained to the Chief Executive that he did not think that Prof Li was an honest broker on matters relating to the HKIED and merger, day 6 p.18 lines 1-5, line 21. Dr Leung (at day 26 p.64 line 23 to p.65 line 18) said he reported that he did not get the sense that the Chief Executive wanted a full merger; he wanted some kind of a merger; student intake was a major concern for him; and Prof Morris' reaction was that it was Prof Li who wanted a full merger, so he was not an honest broker. Dr Leung also said he did not talk to the Chief Executive about merger would only relocate problem or that merger would not work politically: day 26 p.65 line 20 to p.66 line 16.

#### September 2006

117. On 1 September 2006, Prof Li hosted a lunch at the HK Club with Dr Leung and Dr Edgar Cheng. Prof Li's evidence is that this was the action he took to follow up on the Chief Executive's instructions, day 35 p.67 lines 14 to 18. There was a dinner attended by Dr Leung, Mr YK Pang and Prof Morris on 14 September 2006. Katherine Ma's note at [E2/376] recorded a briefing by Prof Morris referring to ">P à Thomas Leung + YK

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last week); ➤After Thomas Leung à SEM + Edgar Cheng CUHK C Chair”; “➤Merger – in the form of take over; not just SEM, the Govt is in favour of this model; will not push this; until after March 07 (Election CE)”.

118. On 28 September 2006 there was a meeting of the HKIED Council, after which there was a “heart to heart” talk by Dr Leung with certain members. Various witnesses gave evidence about this: Dr Lai Kwok Chan, day 19 p.9 line 24 to p.18 line 2; Ms Katherine Ma, day 18 p.145 line 19 to p.149 line 22. There is also a note of the discussion at the subsequent Council meeting on 1 December 2006 as to what was said at this talk: [IEEM2/125-126].

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#### October 2006

119. On 4 October 2006, Prof Luk and Prof Louisa Lam went to CUHK to meet with Prof Kenneth Young. The meeting was initiated by Prof Luk out of concern that CUHK was launching new programmes in ECE. This led to further meetings on 13 October and 20 October to explore federation. Prior to the meeting on 13 October 2006, Prof Kenneth Young sent a table of issues setting out CUHK’s position [E3/178]. At this meeting, Prof Luk suggested that both sides should report to the President/V-C, but not the Council Chairman: see Prof Louisa Lam’s second witness statement [W2/88]. Prof Kenneth Young had reservations about Prof Luk’s position that the Council Chairman should not be informed and decided to break off the discussion: day 24 p.119 line

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10 to p.120 line 15. At [MLB/287 = E3/180] is a document tabled by Prof Luk at his meeting with Prof Kenneth Young.

120. The 18 Academic Board members of HKIED wrote to the Council Offices on the reappointment procedure of Prof Morris: [IE3/267].

#### November 2006

121. On 14 November 2006, Prof Morris sent an email to all staff and students expressing support for a federal arrangement for HKIED. [IE3/341]. This drew immediate and strong reactions from the students, who accused him of “selling out” the HKIED. In an open forum held on 16 November 2006 for the staff and students, Prof Morris explained that his preference was for the HKIED to remain a completely autonomous institution. However, if that was not feasible, his second choice would be for a federal arrangement. See second statement of Prof Louisa Lam [W2/90].

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#### December 2006

122. At the Council meeting on 1 December 2006, Prof Morris and Dr Leung put on record their different versions on the question of whether the re-appointment was linked to the merger issue: [MLA1/250].

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#### January 2007

123. On 25 January 2007, HKIED Council voted to reject the re-appointment of Prof Morris as President: [IEEM2/280].

February 2007

124. On 4 February 2007, Prof Luk published on the intranet of the HKIED the letter which contains the three Allegations which are the subject of this Inquiry.

## Section 5: The First Allegation

125. The First Allegation in the Commission’s terms of reference reads as follows:

“In January 2004, there was a telephone conversation between Professor Paul Morris, the President of the Institute, and Professor Arthur Li, the Secretary for Education and Manpower (“SEM”) in which the latter attempted to persuade Professor Paul Morris to take the initiative to propose a merger of the Institute with the Chinese University of Hong Kong. SEM indicated that *otherwise* he would *then allow* the then Permanent Secretary for Education and Manpower to have a free hand in cutting the number of students of the Institute.” (Emphasis added.)

126. As framed, there is a causal linkage between the two parts of the First Allegation: *if* Prof Morris did not take the initiative to propose a merger of the HKIEd, *then* Prof Li would allow Mrs Law to freely cut its student numbers.

### What Prof Li said during the conversation: three possibilities

127. Prof Li’s evidence is that the cuts were a fait accompli, and that if Prof Morris wanted to avoid this financial crisis, he should consider doing something radical which would enable the HKIEd to take advantage of the restructuring and collaboration fund (day 33, p.172 line 19 to p.173 line 7); and that this was merely offered by him as friendly advice.

128. Whilst Prof Morris said that he would not have described the telephone conversation in the way that Prof Luk did, and that Prof Li did not make any express causal linkage between a merger proposal (or lack thereof) and a cut in student numbers (day 8, p.144 line 22 to p.145, line 25), this does not mean that Prof Li's version (that the cut in numbers was a foregone conclusion, and that he was simply offering friendly advice to Prof Morris to think of doing something radical in order to benefit from the UGC's restructuring and collaboration fund) is the correct one. We would draw the Commission's attention to the following part of Prof Morris's evidence (day 10, p.118 line 9 to p.122 line 23):

Q. I'm asking you to leave that aside for the time being. The nub of what I'm trying to ask you to assist is that part where Prof Luk wrote down in this letter, through translation, to say: "... otherwise, Li would allow Mrs Law, Permanent Secretary, to have a free hand in cutting the number of students of the HKIED." Would you have wished to modify that if you'd been given the chance?

A. I think the conversation had two elements in it, one to do with the Start letter and the decline in student numbers, and the second the attitude of the EMB to the Institute.

So this is accurate with regard to the second aspect. It doesn't include the reference to the Start letter as well, which I remember.

Q. It doesn't refer to the Start letter, but I'm not sure you follow the point I'm asking you to seek to clarify, because there are two different situations. One is where Prof Li is simply telling you, "This is going to happen, and in order to enable the Institute to get through the difficulties the way out is a merger", right?

A. Yes.

Q. That, as I think you agree, is the interpretation that you would put on in your evidence?

A. Yes.

Q. What Prof Luk is putting here is a different interpretation. The difference is that the cutting of the student numbers is not a given situation but a changing,

variable situation depending on whether you are going to agree to merge. Is that not what Prof Luk is portraying here?

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

Q. What is the second part of the discussion?

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

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

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

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

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

A. Okay. Well --

Q. You can have a look at it again.

A. No, it doesn't seem to be here.

Q. If I can show you what you said in your evidence-in-chief, on Day 5, page 66, line 14 -- do you have that?

A. Yes.

Q. Do you find that is reflected in your evidence-in-chief?

A. "Prof Li phoned me and told me 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 ...", yes.

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

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

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

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

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

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

Q. That would be an interpretation?

A. That would be an interpretation, yes.

Q. Rather than what he said?

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

Q. Don't want what to happen?

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

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

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

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

A. It's one part of it."

129. What this part of Prof Morris' evidence suggests is that whilst Prof Li did not call to make an express threat, he was not merely offering friendly advice either. What he was telling Prof Morris was that (a) the HKIED would be undergoing cuts to its student numbers, (b) furthermore, the EMB, with the sole exception of Prof Li, harboured ill feelings towards the HKIED and a desire to cut its numbers, and (c) the only way to stave off the problems faced by the HKIED was for it to merge with the CUHK. In other words, there was no direct linking of the HKIED's failure to merge with a

cut in its student numbers, but there was a suggestion that a failure to merge would leave the HKIED with no protection against the anti-HKIED feeling in the EMB.

130. We would submit that it is necessary for the Commission to make a finding as to what exactly was said by Prof Li before it can be decided whether this amounted to an improper threat, express or implied. There is in fact a lot of common ground between the evidence of Prof Li and Prof Morris as to what was said by Prof Li during the conversation:

130.1. Prof Li accepted that he had called Prof Morris to tell him that the funding cuts were coming, although he did not characterize this as news, being something of which the HKIED would already have been aware (day 33, p.167 lines 2-6; p.169 line 2 to p.170 line 9). Whilst Prof Li says that he had not seen a copy of the Start Letter, this is not really of any significance. He would have seen a copy of the EMB's advice to the UGC which formed the basis of the Start Letter [EMB3(1)/243]. He was also aware that tertiary institutions would be suffering cuts and that the HKIED would suffer additional cuts because of the declining number of schoolchildren and the impending removal of front end loading (day 33, p.166 lines 9-24).

130.2. Prof Li accepted that the word "radical" was one that he

would have used; he would have meant that the HKIED should “think out of the box and really take the institution to a different level, by deep collaboration, by collaboration, joint programme, joint degrees, that sort of thing” (day 33 p.165 lines 9-20). Whilst Prof Morris did not mention this in his evidence in chief, he accepted that Prof Li had used the word “radical” and that Prof Li had conveyed the message that if the HKIED did not do something radical it would not be saved from the cuts (day 8 p.137 lines 2-12).

130.3. Prof Li said that he had called up to tell Prof Morris about the restructuring and collaboration fund which the UGC had set up (day 33, p.167 lines 4-9). He had linked this to the need to do something radical: “You have to do something radical. You have to do something different. You have to come up with something that could satisfy the UGC restructuring and collaboration grant and get some money from there” (day 33, p.170 lines 21-25; see also p.172 line 19 to p.173 line 7). Prof Morris agreed that Prof Li had referred to funds which had been set aside to support a merger, although he did not think that there had been a reference to the UGC fund (day 9, p.82 lines 11 to 25).

130.4. Prof Li accepted that he said that he had put the matter on the basis that he was Prof Morris’s “friend” (day 33, p.177 line 23).

*Key to determining what Prof Li said during the conversation*

131. The key differences between the accounts of Prof Morris and Prof Li are therefore:

131.1. did Prof Li mention that he was the HKIEd's "only friend"?

131.2. did Prof Li mention that the EMB had an "anti-HKIEd" feeling?

132. Prof Li denied that he had made these two points to Prof Morris (day 33, p.174 line 18 to p.178 line 7). Without these two elements, the conversation would have been innocuous. These two points are therefore key to a determination of the facts relating to the First Allegation.

133. In deciding whether Prof Li did refer to his being Prof Morris' "only friend" and that the EMB harboured an anti-HKIEd feeling, we submit that the following factors are relevant for the Commission's consideration:

133.1. On at least one other occasion, Prof Li indicated to Prof Morris that he had precious few friends, but that he was trying to be one of them. This is the taped conversation of November 2005 ("...friends are getting a little bit...thin on

the ground...”) [MLA1/164-2 at 164-12]. Whilst it is true that this was an occasion almost 2 years after the occasion in the First Allegation, and an occasion on which Prof Li felt provoked and frustrated, it does seem rather similar to Prof Morris’ description of the January 2004 conversation. Moreover, when cross examined about the taped conversation, Prof Li did not accept that when he said that he would be happy to set up a committee to look into the future of the HKIEd, he was being threatening (day 37, p.53 lines 11-23). Objectively, however, the suggestion could only be described as a threat. His denial that he had made a threat in the conversation of January 2004 must therefore be assessed in the light of his apparent understanding of what may constitute a threat. Furthermore, his denial that he had made any threats in the taped conversation must weigh against his credibility.

133.2. Prof Li admitted that he wanted to “push” the HKIEd to merge (day 37, p.9 line 19 to p.10 line 8). He knew that Prof Morris had thought that the EMB was against him and was undermining the HKIEd, and indeed this was why he often said to Prof Morris that he was his friend (day 34 p.77 lines 6-15). There was clearly a motive for Prof Li to have sought to give Prof Morris an additional “push” to merge by holding out a carrot (in the form of the UGC fund) on the one hand and painting the vision of a stick (an

anti-HKIEd feeling) on the other.

133.3. Whilst there was nothing to suggest that Prof Morris was against a merger in January 2004 (see further below), this did not mean that Prof Li would not have been inclined to make a forceful statement to push Prof Morris along this route. Cf. Prof Li's statement at the tea party of 4 October 2002 declaring an approach of “先禮後兵” to a merger between CUHK and HKUST despite knowing that both of them were willing parties.

133.4. Prof Luk recalled that he was told something to the effect that Prof Li had said that he was Prof Morris' only friend in the EMB and that the EMB was against him (day 12 p.132 lines 8-12). However, it should be pointed out that Prof Luk would have an obvious motive for seeking to corroborate Prof Morris's evidence, and that the other witnesses to whom Prof Morris reported the conversation (Prof Phil Moore, Ms Katherine Ma, and Ms Doreen Cheng) did not mention these elements of the conversation.

133.5. We would submit that Prof Morris generally gave credible evidence in relation to the conversation of January 2004. He could easily have given a version of the conversation which simply corroborated what was stated in the intranet letter of Prof Luk, but he did not do so. On the other hand,

Prof Morris was prone to confusing dates of events, and transposing conversations or parts thereof to other conversations (as evidenced by his evidence in relation to the Second Allegation, dealt with below). It is therefore possible that Prof Li's reference to friends and the EMB's anti-HKIED feeling took place during another conversation and was mis-remembered. According to Prof Morris, he had another telephone conversation with Prof Li in March 2004, and a lunch with him at Toscana in April 2004, at which the HKIED's unpopularity with the EMB was discussed, in the context of the school principals' conference; the topic of Prof Li's helping the HKIED if it merged also came up (day 5, p.74 lines 11-19; p.77 line 15 to p.78 line 25).

- 133.6. Furthermore, by January 2004, Prof Morris had formed the perception, rightly or otherwise, that EMB was unjustifiably critical of the HKIED. Given that frame of mind, he may have been disposed to take Prof Li's message in a negative light. It is possible that during the telephone conversation, Prof Li was attempting to deliver a message along the lines of that delivered to Dr Simon Ip in July 2002, namely, that if the HKIED did not initiate a merger then a merger would be imposed upon it. It will be remembered that Prof Morris took that message to mean that if the HKIED did not initiate a merger then it would be

made unviable (which was not the message which Dr Ip thought was being given). It is quite possible that Prof Morris understood what Prof Li said in January 2004 in the same vein.

*Evidence of witnesses to whom the conversation was relayed by Prof Morris*

134. When determining what was said by Prof Li in the conversation of January 2004, it is also relevant to have regard to the evidence of those persons to whom Prof Morris relayed the conversation relatively soon afterwards. These persons included Prof Phillip Moore, Ms Katherine Ma, and Ms Doreen Cheng. All of them recalled that they had been told that Prof Li had put the matter on the basis that there was a causal link between the cut in student numbers and the failure to merge – “Arthur said that we have to do something radical and he asked me to initiate a merger with the CU, otherwise our student numbers would be squeezed” (Cheng, day 20, p.57 lines 11 to 14); “SEM proposed that Professor Paul Morris should initiate merger related discussions with other institution(s), or else he would allow the then PSEM to have a free hand in cutting the number of students of the Institute” (Ma III, para 3 [W2/14]); Arthur has been on the phone to me. If we don’t merge, there will be cuts” (Moore, day 23, p.154 lines 3-6) (emphases added).

135. We submit that whilst Prof Li may not have expressly linked the failure to merge with a cutting of student numbers, the evidence of these witnesses tends to show that this was the impression which was left in Prof Morris's mind at the time of the conversation. It is, of course, possible that the impression which Prof Morris got was not necessarily the impression which Prof Li intended to give; and indeed Prof Morris's sensitivity towards EMB must be borne in mind. However, if it was the case that Prof Morris was favourably disposed towards some form of institutional integration in January 2004, and all that Prof Li had called to tell him about was the impending funding cuts and the existence of the restructuring and collaboration fund, it may be said that this would not have left Prof Morris unhappy in any way. As Prof Li said, Prof Morris already knew that cuts were coming, so this would not have been news to him. The setting up of the UGC fund ought to have been welcome news if Prof Morris had been inclined to take the HKIED towards some form of merger. On the other hand, it is possible that what Prof Morris was unhappy about was merely to be reminded of the impending cuts. When asked about his feelings after the telephone conversation, he said that he was concerned about the student numbers (together with displeasure about EMB's attitude) (day 10, p.123 line 13 to p.124, line 6).

136. As to Prof Luk's evidence, whilst his account is not entirely hearsay, in that he heard Prof Morris' side of the conversation, and he was also the first to be informed by Prof Morris of Prof Li's side

of the conversation, we submit that relatively little weight should be placed on his account of what Prof Li said. Firstly, Prof Luk accepted that his knowledge of what was said by Prof Li was a combination of what Prof Morris quoted to him verbatim and Prof Morris' summary, and the only matter which he recalled being directly quoted was the reference to the Chung Chi model (day 12, p.143 lines 1 to 24; day 15, p.36 line 18 to p.37, line 11); moreover, the first time he had to really try to recall the details of the conversation was when he prepared his witness statement to the Commission (day 15, p.53 line 17 to p.54, line 17). Secondly, Prof Luk had a motive to give evidence to corroborate the version of events as stated in his intranet letter. He had gone so far as to say (in an interview on RTHK on 5 February 2007 [EMB11/49 at 51]) that he and Prof Morris had been shocked by the indecent, naked threat made by Prof Li, which did not accord with the evidence given by Prof Morris, or indeed his own evidence: day 15, p.37 line 12.

137. Dr Thomas Leung says that he was never told of the telephone conversation at the time, although Prof Morris and Prof Luk say that he was told, and that Dr Leung requested the meeting of 23 February 2004 as a result. He further said that the meeting had been arranged on his initiative, rather than at the request of Prof Morris (day 26, p.4 lines 12 to 17). Even so, it seems rather unlikely that he was not told of the telephone conversation at all. Whether the conversation took place along the lines described by

Prof Luk, Prof Morris or even Prof Li, it would not have been unnatural for them to brief Dr Leung ahead of the meeting with Prof Li. We submit that relatively little weight should be given to Dr Leung's testimony in this regard.

*Objective background and subsequent events; subjective views of Prof Li and Prof Morris*

138. In assessing which version of the January 2004 conversation was the more likely, it is also relevant for the Commission to consider (a) the inherent probabilities as shown by the objective factual background as at 21 January 2004, and the events which took place just after the telephone conversation and with which version of the conversation they are more consistent, (b) Prof Li's subjective views on, and approach to, merger which he held at the relevant time, and (c) Prof Morris's subjective views about the EMB which he held at the relevant time.

*(a) Objective background and subsequent events*

139. Objectively, as at January 2004, there was nothing to suggest that Prof Li would have had any need or motive to utter any threat to get Prof Morris to initiate a merger. Whilst in 2002, the HKIED had announced that it had no plans to merge with another university, by late 2003 circumstances had changed, at least insofar as looser forms of integration were concerned. As Dr Leung explained, the

lunches with the top officials of the UGC and the EMB in September and October 2003 were for the purpose of expressing the HKIED's new stance. Prof Morris had indicated at the lunch with Dr Lam and Mr Stone of the UGC on 1 September 2003 that he was keen on merger (in the pre-Niland sense, and albeit less so in the absence of self-accreditation) (although there is no evidence that Prof Li knew of this); and apparently had followed up the lunch with a letter suggesting that the Niland study address the longer term future of the HKIED as well [IE24/83]. Whilst it is not clear whether the letter was sent out, it does shed light on the mindset of Prof Morris and the impression he would have given at the lunch.

140. Subsequently, Dr Leung had indicated at a lunch with Mrs Law and Prof Li himself on 13 or 14 October 2003 that the HKIED was amenable to considering different forms of institutional integration. Whilst Prof Morris was not present at this lunch and denies that he was of the same view as Dr Leung and Mr Chan, even if there was such a difference of views at the time, there was nothing to suggest to Prof Li at the time that this might be the case. Earlier in the year, on 28 February 2003, Prof Morris had written to Dr Lam, copying in Prof Li, indicating that the HKIED Council approached the issues of collaboration and strategic alliances with an open mind, and recommending that the UGC facilitate discussions on collaboration and integration and invite institutions to explore the possibilities [EMB5(1)/152].

141. Prof Li had apparently endorsed the brief prepared by the EMB for the Chief Executive's meeting with the UGC on 19 August 2003 which described the HKIED as wishing to explore collaboration and a possible merger [EMB5(1)/155-2]. There is no particular evidence to suggest that at this stage, Prof Li wished to paint a more optimistic picture to the Chief Executive than was really the case.
142. When giving evidence, Prof Morris claimed to be "astonished" to read Mrs Law's email of 14 October 2003 recording that Dr Leung at lunch had suggested that the HKIED wanted "an early indication of the plan to merge HKIED with CUHK", and that the email showed that there had been discussions between Dr Leung and the SEM and PSEM about merger, which was contrary to council policy (day 7, p.133 lines 6-18). Reference has been made above to Dr Leung's evidence where he denies having said this. Irrespective of what Dr Leung said at the meeting, Prof Morris should not have been as astonished as he claimed, as in his email of 19 September 2003 to Dr Leung, he had indicated agreement with Dr Leung's view that "strategically we should take the initiative now as to wait could result in us being in a very weak bargaining position. We should however not give the initial impression that we have decided to merge and wish to negotiate the terms. I think we should take the line that – we believe that if certain conditions were satisfied, a merger could be beneficial and help the HKIED to better

achieve its mission” [MLA1/206]. Prof Morris and Dr Leung had taken part in a meeting of the HKIEd’s Focus Group on Long-term Role and Positioning the day before, at which these “conditions” had apparently been discussed in some detail: see draft minutes at [MLA1/207 at 208] and paper [IEEM1/204 at 208]. It will be remembered that earlier in June, Prof Morris had also sent an email to Dr Leung indicating “full support” for a “genuine federal arrangement” [E2/274]. These documents indicate that Prof Morris was less resistant to institutional integration than he sought to suggest in the witness box. They should also be contrasted with paras. 5.20 to 5.24 of Prof Luk’s witness statement [W1/125], which seek to suggest that consideration of federal models (and a number of other steps towards collaboration) was taken only as a result of the January 2004 conversation.

143. Furthermore, at the time of the telephone conversation in January 2004, the Niland report had not yet been published. The term “merger” had yet to be defined with precision and it appears to have been used loosely without necessarily connoting a full merger: see for example Prof Morris’ email to Dr Leung of September 2003 [MLA1/206]. Even if the term was used by Prof Li in the conversation, it does not necessarily follow that what he was seeking was a full merger of the HKIEd with another institution. Whilst Prof Morris was adamant that this is what Prof Li was seeking, it does not seem that this is what Prof Li had expressly told him. He recalls that on a number of occasions (but not during

the January 2004 conversation) Prof Li referred to the “Chung Chi model”, but this in itself was ambiguous. The colleges of CUHK, of which Chung Chi College was, at one time (prior to the 1970s), a federal model. Prof Morris however understood it to mean the modern day Chung Chi model, which was no longer federal (day 9, p.25, lines 1-5). In any event, Prof Morris did not recall that Prof Li specifically referred to the Chung Chi model in the January 2004 conversation (day 9, p.25 lines 17-21). More importantly, even in August 2004 Ms Katherine Ma noted Prof Li as having indicated that “so long as HKIED decides to go ahead, he would support which institutions with and which model” [IE4/350]. We will address the question of what Prof Li was seeking in terms of merger in greater detail in Section 8 below.

144. It was said by Prof Luk that his understanding was that to stave off the threat, something had to be done by the HKIED between the Start Letter and the Allocation Letter (day 15, p.45 line 24 to p.47 line 4). Hence, it is suggested, talks were commenced with CUHK. However, it is not said that any report (of any steps taken) was given to Prof Li in this period. How, then, would Prof Li’s help in stopping any anti-HKIED action have been obtained? Note, however, that there is a suggestion that Prof Morris may have informed Prof Li of the discussions regarding deep collaboration (day 9, p.111 lines 16-19), although it does not really seem to be Prof Morris’s case that he informed Prof Li about the discussions at any time in order to stop Prof Li carrying out any action against the

HKIEd.

145. It does not appear that the changes to the student numbers originally appearing in the Start Letter of 21 January 2004 (“the First Start Letter”), resulting in the revised Start Letter of 17 February 2004 (“the Second Start Letter”), were an implementation of the alleged threat to cut the HKIEd’s student numbers. In fact, the original advice given by the EMB to the UGC was that the FYFD numbers for B Ed (primary level) were to be increased; since Prof Li knew of the proposed student numbers at the time of the conversation with Prof Morris, this renders it rather unlikely that he would have used the occasion to send a threatening message to Prof Morris. Furthermore, after the telephone conversation, it does not appear that actions were deliberately taken to disadvantage the HKIEd in order to force it to undergo a merger, although we would add that a number of question marks remain in the area of teacher education places in early childhood learning. This issue will be addressed in greater detail below.

146. As the meeting on 23 February 2004 between Prof Morris, Prof Luk, Dr Leung and Prof Li was held close in time to the January 2004 conversation, it is also worth considering whether this may shed light on what was said during the conversation. Prof Luk says that it was a direct response to the January 2004 conversation: see paras 5.21 and 5.25 of his statement [W1/125]. However, as submitted above, his suggestion that research into federal models

were only undertaken as a direct response to the January 2004 conversation cannot be right. Dr Leung says that he was not briefed about the January 2004 conversation at all and hence this could not have been the reason for the meeting, but as submitted above this also seems unlikely. Ultimately, however, it is submitted that the fact of the meeting does not shed light on whose version of the January 2004 conversation is correct. If Prof Morris's version of the conversation is correct, the meeting could have been convened to discuss the concerns arising out of the conversation. If Prof Li's version of the conversation is correct, the meeting could have been convened to discuss further what radical measures could be taken by the HKIEd in order to secure funding from the UGC fund.

147. A further incident which was relatively close in time was the April 2004 retreat of the HKIEd council. As analysed below in Section 9, it appears that Dr Leung did indeed present the various models described in the Niland report and did indicate to the participants that they should not go for the extremes. What is more pertinent for present purposes is that Dr Leung did tell the audience "UGC initiated Sutherland govt can put some pressure through funding" [IE26/89]. It will be recalled that Mr YK Pang had said that Dr Leung used the expression "death by a thousand cuts" in the light of a number of factors, one of them being "the government's stance on institutional integrations" [W1/215]. It might be said, therefore, that what prompted Dr Leung to mention "pressure through funding" was his knowledge of the January 2004 telephone

conversation.

148. When asked about his comment at the retreat, Dr Leung said that this was a reference to the Sutherland report, which mentioned that Government could use funding as a strategy and tool to facilitate institutional merger. He said he had only been making a general comment rather than a reference to the HKIEd in particular; whilst in theory, the Government could use funding to force an institution to merge, he thought that this would be difficult in practice since the Government would have to have the basis, grounds and calculations to change the funding formula (day 32, p.86 line 23 to p.88 line 6).
149. On the existing evidence, though, it is probably difficult to conclude that Dr Leung's comment was a result of knowledge about the January 2004 conversation. It could have been inspired by other events, such as the conversation with Mrs Law regarding the tendering of training places in early childhood education, or simply been his own conclusion based on his understanding of the Government's position as set out in the Sutherland and Niland reports.
150. As to subsequent events, whilst much time was spent on hearing evidence relating to them, we submit that they are of little assistance in ascertaining what was said during the January 2004 conversation. What Prof Morris' and Prof Li's attitude towards

merger was in 2006, for example, may not reflect their mindset of January 2004. We will therefore deal with these events in a subsequent section.

151. Taking the objective background as a whole, therefore, it is submitted that there was no apparent reason why Prof Li should need to make a threat to Prof Morris in order to get the HKIEd to initiate a merger. However, it is also necessary to assess the subjective mindset of Prof Li as at January 2004.

*(b) Subjective mindset of Prof Li*

152. It was well known that Prof Li advocated merger of one form or another for universities, and he had publicly made his stance known: first as vice-chancellor of CUHK (see for example the extracts of his interview on RTHK in March 2002 [MLA1/103-1], and subsequently as SEM (see for example the report of his approach of “先禮後兵” in October 2002 [IE4/36]). He was capable of expressing his desire to see some form of merger rather forcefully, and was known to have done so on a number of occasions: namely, at the tea party in 4 October 2002, and at lunch with Dr Simon Ip on 19 July 2002. This may be contrasted with his more “conciliatory” approach which struck Mr Michael Stone sufficiently for him to make a note of it in December 2005 [E2/244].

153. What is significant about the comments made by Prof Li in October 2002 is that:

153.1. although the heads of HKUST and CUHK had apparently indicated their willingness to explore merger, Prof Li nevertheless thought it appropriate to take the stance that a merger would be forced if it was not forthcoming;

153.2. the comments were made at a time when the Sutherland report had been published only some seven months previously, yet Prof Li was already keen to see action being taken towards merger.

154. Prof Li's answer at day 37, p.9 lines 20-25 are also relevant here: "I have never refused or said that I don't push them to merge...since the Sutherland report...I have advocated that institutions should work closely together."

155. It is therefore submitted that notwithstanding the objective background as at 21 January 2004, the approach and views of Prof Li towards the issue of merger may well have led him to suggest to Prof Morris that the only way to stave off the problems faced by the HKIEd (including those stemming from the anti-HKIEd feeling in the HKIEd) was for it to merge with the CUHK.

*(c) Subjective mindset of Prof Morris*

156. On the other hand, any propensity which Prof Li may have had towards making forceful statements about the desirability of merger must be weighed against Prof Morris's sensitivity towards the EMB at the relevant time and whether this may have led him to interpret Prof Li's words less than objectively.
157. In this connection, the evidence given by Dr Simon Ip and that given by Mr Alfred Chan as to the lunch meeting at JSM on 19 July 2002 is pertinent. Both Dr Ip and Mr Chan distinctly remember that Prof Li used the word "rape". Dr Ip's evidence as to the context in which the word was used is clear and cogent, being supported a contemporaneous attendance note which he forwarded to Mr Chan after the meeting. The evidence establishes that the whole purpose of the meeting was for Dr Ip to ascertain the intentions of Prof Li on the question of merger, and the note which Dr Ip took made it plain that Prof Li's attitude at the time was that the merger had to take place, regardless of the views of the HKIED. This is wholly consistent with the mindset of Prof Li in 2002. Whilst Mr Chan was unable to recall the context in which the word "rape" was used, it is inconceivable that the word could have been used in any sense other than that to which Dr Ip testified. None has been suggested. Prof Li speculated that perhaps "rape" was Dr Ip's "interpretation" (day 36, p.109 line 24 to p.110 lines 1-19), but this is not a possible interpretation of the evidence given, as both Dr Ip

and Mr Chan were sure that the word was used.

158. It is not entirely clear when Prof Morris learnt that Prof Li had said that the HKIED would be raped. However, by all accounts, it seems clear that he knew of this by January 2004. As he himself said, because of this incident, he “became extremely cautious as to all [his] dealings with Prof Li. [He] was extremely suspicious of every action that related to the IEd, because [he] did tend to see those actions as a pattern of achieving the goal of raping the IEd” (day 5 p.48 lines 6-10).
159. Additionally, it is noteworthy that Prof Morris interpreted Prof Li’s indication of rape as an indication that the HKIED would be made unviable (whereas Dr Ip merely considered it to be an inappropriate use of language).
160. It will also be recalled that the LPAT results were released in June 2003. The incident rankled on in his mind and to this day, he does not accept that they were released without malice (we address the details of this incident further below in Section 8). This incident is particularly relevant in considering the mindset which Prof Morris would have had when speaking to Prof Li in January 2004, because (a) it was, on Prof Morris’s own evidence, the main incident which caused him to view the EMB with distrust and suspicion; (b) it would have been fresh in his mind in January 2004; (c) it is submitted that on an objective view, the release of the LPAT results

could not be considered to have targeted the HKIEd, so that the incident provides an objective measure of the degree of sensitivity of Prof Morris.

161. Prof Morris himself indicated that as a result of the LPAT incident, he was “extremely cautious and sensitive as to what was going on with the EMB” (day 7, p.114 lines 14-16).
162. It is therefore entirely possible that given a sensitive and suspicious mindset on the part of Prof Morris, he interpreted a reference by Prof Li in the January 2004 conversation to a cut in student numbers as having a sinister cause, and a reference to his being a friend as a reference to his being the *only* friend.
163. It appears that Prof Morris’s suspicion as to the actions of the EMB, Prof Li and Mrs Law have not lessened since 2004. It is therefore also possible that Prof Morris’s present-day recollection of the telephone call contains an element of interpretation brought about by his continuing suspicions. Accordingly, it is relevant to consider what Prof Morris’s reaction was at the conclusion of the telephone call with Prof Li in 2004. It is significant that Prof Morris said that his feeling was one of concern that there was to be a significant cut in the HKIEd’s student numbers, and displeasure about the indication that the EMB had a strongly negative attitude towards the HKIEd (day 10, p.123 line 13 to p.124, line 6). If Prof Li had made what would have been an obviously improper threat, it is

surprising that Prof Morris did not feel anger or indignation at this (in the way that he did, for example, over the LPAT). Prof Luk said that they had felt concern about the cut in numbers and the pressure to merge (day 15, p.39 lines 10-23). (This may be compared with Prof Luk's claim that they had both felt shock at the indecent, naked threat by a Government official, made during his interview on RTHK on 5 February 2007 [EMB11/49 at 51].)

#### Student numbers and other attempts to disadvantage the HKIED

164. In the course of their evidence, Profs Morris and Luk pointed to a number of matters as being evidence of the EMB's cutting of the HKIED's student numbers, or otherwise attempts to disadvantage the HKIED.

#### *Reduction in student numbers for B Ed program (primary level) between First and Second Start Letters*

165. In the First Start Letter of 21 January 2004 [U2/170 at 175] para. 18, the UGC stated that to meet the projected need for teachers from 2009/10 to 2011/12, about 1,330 FYFD places should be allocated at the primary level. In the Second Start Letter dated 17 February 2004 [U2/192], the FYFD places at the primary level were reduced from 1,330 to 1,030. (At the same time, there was an increase in the FYFD places for the *secondary* level from 1,030 to 1,050.) It should be noted that the proposed level of B Ed FYFD at

the primary level represented a significant increase on the numbers for the previous roll over year of 2004/05 (see Lai Kwok Chan's table at E3/126].

166. Since HKIEd is the main provider (over 80%) of the B Ed degree program at primary level, it suffered most from this reduction in FYFDs. The increase in FYFDs at the secondary level did not benefit the HKIEd because (a) it offered only about 20% of those programs, and (b) in any event it suffered cuts in secondary level FYFD (see below).
167. The complaint was raised in Prof Luk's witness statement para. 5.43 [W1/131] and Prof. Morris' witness statement para. 37 (in his adoption of complaints raised by Prof Luk to LegCo on 28 February 2006) [W1/95]. It was raised with Prof Morris on day 8, p.48 line 17 to p.153, line 4; and with Prof Luk on day 15, p.65 line 13 to p.66, line 2. This complaint was repeated in Dr Lai Kwok Chan's statement para. 19 [W1/199] and raised with him on day 20, p.100 line 14, line 16 to p.106, line 17). Mrs Law's response is in paras. 18-23 of her third statement [W1/261].
168. The complaint is that this reduction cannot be justified by demographics. Dr Lai said in his evidence (day 19 p.28 line 13) that this reduction could not be accounted for as fine tuning in planning because of the size of reduction (300 places), and described it, when coupled with the increase in secondary FYFDs,

as “very unusual” (day 20, p.104 line 25 to p.105 line 5). EMB was forecasting in January 2004 that a total of 1,330 was required. No explanation had been given to the HKIEd as to why, only 3 weeks later, this was reduced to 1,030.

169. It would appear, however, that the reduction came about as a result of the UGC’s request to the EMB. The EMB’s informal “advice” to the UGC had proposed 1,330 FFYD at the primary level [EMB3(1)/170]. The First Start Letter had reflected this. However, in the meantime, Dr Lam of the UGC had written to Prof Li on 14 January 2004 [EMB3(1)/239], saying (para. 4) that she was “most uncomfortable with the notion that the UGC should rob Peter to pay Paul for this activity at this time.” This was a reference to the proposal to increase the FYFD number for teacher education places, which would have required a corresponding reduction in FYFDs for other disciplines, since the total FYFDs for all disciplines was to be capped at 14,500. Prof Li wrote on the letter “Since UGC knows our intention, ask them for a proposal back. We need to rob Peter + pay Paul but NOT TOO MUCH!”
170. On 20 January 2004, the EMB sent its formal advice on planning parameters for the 2005/06 to 2007/08 triennium [EMB3(1)/243 = U2/155]. The request for 1,330 FYFD (primary) was maintained [EMB3(1)/248]. However, on the same day, there was a meeting between Mrs Law and Mr Michael Stone, at which it was agreed on behalf of the EMB that more flexibility would be given to the

UGC. Instead of allocating the FYFD places (primary plus secondary) as proposed on 13 October 2003, the proposal was to allocate 700 in each of 2005/06, 2006/07, and 2007/08: this represented both an overall decrease in FYFD places over the triennium and also an evening out of the distribution of FYFDs across the 3 years [EMB3(2)/257-1]. It appears that the question of how to split these between primary and secondary was left to the EMB and the slight increase in secondary level was not challenged by the UGC, as it was relatively small: Mr Michael Stone, day 21, p.12 lines 22 to p.13, line 13; p.49, lines 13 to p.50, line 2. This resulted in a revised allocation from EMB on 13 February 2004 [EMB3(2)/258], which was subsequently reflected in the Second Start Letter.

171. It would therefore appear that the reduction in primary level FYFDs occurred as a result of UGC's request, rather than on the EMB's initiative. The reduction also took place before the phone call which is the subject of the First Allegation. It should be noted that ultimately, the HKIEd's allocation of primary level FYFD for the 2005/06 to 2007/08 triennium was greater than that for 2004/05: see para.18 of Dr Lai's first statement [W1/199].
172. This issue was not pursued by leading counsel for Profs Morris and Luk in the cross examination of Mrs Law.

*All cuts in student numbers for B Ed program (secondary level) were from the HKIEd, and overall, the HKIEd was the only institution which suffered a net reduction in FYFDs*

173. The HKIEd suffered a cut of 128 FYFDs in its two secondary level B Ed programs. This was partly offset by 35 FYFDs for its new collaborative programs, but overall (and after taking into account its increase in primary level FYFDs), the HKIEd suffered a loss of 25 FYFDs, and was the only UGC-funded institution to have its FYFDs reduced for the 2005/06 to 2007/08 triennium. See Dr Lai's statement paras.18-20 [W1/199] and table at [E2/131].
174. As regards the 25 FYFDs which the HKIEd lost, these correspond to a gain of 10 FYFDs by Hong Kong University ("HKU") and 25 by Lingnan University: [E2/131]. It appears, however, that this was solely due to decisions made by the UGC, on the recommendation of its Institutional Development Sub-Committee. The redeployment was made to support the new initiatives of Lingnan University and HKU in teacher education programs. See para. 12 of the minutes of the Sub-Committee's meeting on 22 April 2004 [U2/327 at 331], and para. 13.7 of the minutes of the UGC meeting on 21 and 23 April 2004 [U2/334 at 346]. Lingnan required support because the small size of the institution meant that it was difficult for it to redeploy numbers internally; HKU's additional 10 places were a reward for its genuine attempt to set up 2+2 programs: Michael Stone, Day 21, p.52, line 16 to p.56, line 9.

175. As regards the overall reduction in FYFDs, it should be noted that Dr Lai's table at [E2/131] shows the FYFDs for *all* disciplines of the UGC-funded institutions. As far as teacher training FYFDs went, HKIEd was not the only institution to suffer an overall reduction in FYFDs. The Polytechnic University ("PolyU") and the Hong Kong University of Science and Technology ("HKUST") also suffered cuts, which in terms of percentage were much more severe than those suffered by HKIEd: see Dr Lai's table at [E3/215]. Presumably, the monotechnic nature of the HKIEd means that it was more vulnerable to changes in demand for teachers.

176. Also relevant is a paper prepared for the UGC's Core Group on Academic Development Proposals [U2/289]. At para. 7, the paper stated "Members will note from TESC 05/04 that according to the Administration's advice, the sector-wide annual FYFD requirement for teacher education (TE) in 2005-2008 should remain at the level of 700. At first glance, it appears that HKIEd, being a single-discipline institution offering TE programmes, should be allowed to maintain its institutional FYFD at its 2004/05 level. Nevertheless, analysis under TESC 05/04 shows that due to the fact that at the secondary level, with the exception of English Language (which is not HKIEd's area of strength), demand for TE places will have to drop significantly. Furthermore, places in most Key Learning Areas at the primary level also have to reduce. This leads

to the Secretariat's recommendation under TESC 05/04 that HKIED's FYFD will have to come down to 453 in 2005/06 and 433 in 2006/07 and 2007/08".

177. It would therefore appear that the reduction in secondary FYFDs of the HKIED, and the resulting position that the HKIED was the only institution suffering a FYFD cut for 2005/06 to 2007/08 triennium, was because of a decision made by the UGC.
178. This issue was not pursued by leading counsel for Profs Morris and Luk in the cross examination of Mrs Law.

*All FYFDs for HKIED's collaborative program with Lingnan University came from HKIED*

179. This complaint is linked to the complaint that the HKIED suffered a loss of 25 FYFDs. The reallocation of 15 FYFDs to Lingnan was in fact to support a proposed collaborative program between the HKIED and Lingnan University for a 4-year B Ed program, which was to have 30 places. The complaint is that HKIED was given to understand that on the funding of joint programs, FYFD numbers should be a matter of agreement between the 2 institutions (see email from Michael Stone saying as much [E2/131-2]), but was surprised to learn, only upon receipt of the allocation letter dated 7 May 2004 [U2/350 at 351-2] that the HKIED was expected to shoulder all the FYFD quota. (In the joint degree programme

between HKIEd and City University and PolyU, the FYFD was shared 50:50 between the 2 institutions.)

180. The complaint was made by Prof Luk in his evidence (day 15 p.67 line 16 to p.69 line 1; p.119 line 10 to p.126 line 4). This is also referred to in Dr Lai's statement paras. 18 and 21 [W1/199].
181. It appears that Lingnan University did inform the HKIEd that they would not be able to redeploy its own FYFDs for its part of the program, and had requested the UGC for additional FYFDs; see fax to Prof Luk on 23 March 2004 [U3/8]. However, the UGC eventually decided that all the FYFDs should come from HKIEd in the allocation letter (and prior to that it appears that HKIEd was told about this: see meeting between UGC's Core Group on ADPs and HKIEd on 22 April 2004 [U2/303]). It did, however, leave the division of resources to be worked out between the two institutions: see letter from Dr Lam to Prof Morris of 27 May 2004 [U2/378].
182. As mentioned above, the minutes of the Institutional Development Sub-Committee's meeting on 22 April 2004 [U2/327 at 331], and para. 13.7 of the minutes of the UGC meeting on 21 and 23 April 2004 [U2/334 at 346] show that the decision that the HKIEd would shoulder all the FYFD quota for the collaborative program was that of the UGC and not the EMB. This was confirmed by Michael Stone (day 21, p.59, lines 4-9; day 22, p.83 line 18 to p.84, line 5).

183. This issue was not pursued by leading counsel for Profs Morris and Luk in the cross examination of Mrs Law.

*“Zero” FYFDs for secondary level arts, music and physical education in 2008/09*

184. It is suggested that the HKIED continued to be disadvantaged beyond the 2005/06 to 2007/08 triennium in that in the start letter for the 2008/09 roll over year, the proposed intake in the areas of arts, music and physical education (secondary level) was to be “zero”: [U8/139 at 149]. The gravamen of Prof Morris’s complaint is that 2008/09 being a rollover year, there should have been no significant change to the student numbers (day 8, p.50 lines 12 to 21), and that the effect of the “zero” would be to close down the course, so that by the time demand picked up, the HKIED’s capacity would have been severely damaged (day 5, p.120 line 1 to p.123, line 1); the programs would be closed down and after 2012 there would be no more secondary school teachers in art, music or physical education, apart from the odd one or two trained via the PGDE route (day 11, p.134 line 18 to p.135, line 19). Prof Luk said that the “zero” was contrary to an indication given by Ms Susanna Cheung that there would be no significant changes in the rollover year; the effect of the “zero” was that the HKIED would have to close down its departments (day 15, p.69 line 21 to p.70, line 12). The indication had been given at a meeting between Ms Cheung and Prof Phil Moore: see Prof Moore’s email of 26 January 2006

[W1/18-1].

185. The reason that had been given for the “zero” was that there would be a surplus of teachers in 2012/13, as there would be no Form 7 students in that year: letter from Mr Stone of 1 March 2007 [MLA2/424]. Prof Morris took issue with this logic: day 9, p.137, lines 19-21. Regarding the indication given by Ms Cheung, her explanation was that what she meant was that the overall student numbers for 2008/09 were not going to change; she had no idea how these would be allocated amongst institutions (day 25, p.60 line 6 to p.61, line 16).
186. It appears to be an over-statement to suggest that the HKIED’s departments in arts, music and physical education would be shut down if the course was not to be run for a year, because those departments would still be catering for second and third year students in that year. Also, the courses at the primary level would continue to be run. There seems to be no dispute that there would be a surplus of teachers in 2012/13 because of the 3-3-4 reform (in particular, the abolition of Form 7). Mrs Law explained that the EMB had thought that there would not be such a big impact as alleged (day 31, p.109 line 21 to p.113, line 7).
187. It should be noted that the “zero” intake was to apply to a number of KLAs other than arts, music and physical education: for example, science education, technology education, liberal studies.

It was not suggested by Prof Morris that these were areas in which the HKIEd specializes. If so, this would tend to suggest that the proposed student number intake was not aimed at disadvantaging the HKIEd. Certainly, it appears that the dissatisfaction with the proposed numbers for the rollover year was not confined to HKIEd: see letter from HUCOM to Mr Stone of 7 August 2006 [U8/157 = MLA2/414]. Furthermore, in the area of physical education, the CUHK was also a provider and was also affected by the proposed “zero” in this area: see joint letter from Prof Morris and Prof Lau of 29 September 2006 [U8/167]. On the other hand, Mr Stone pointed out that given the number of surplus teachers was estimated to be in the range of some 2,000, allowing a few additional FYFDs did not seem objectionable (day 21, p.59 line 12 to p.61, line 8).

188. Subsequently, there were further negotiations between the TEIs and the UGC, and between the UGC and the EMB. Ultimately, the EMB agreed that 40 FYFDs could be redeployed from other KLAS to the areas of arts, music and physical education: see letter from UGC to Prof Morris of 23 April 2007 [U8/196]. This meant that the HKIEd would not have additional quota; it would have to redeploy its own FYFDs: Mr Stone, day 22, p.74 line 13 to p.75, line 22. Mr Stone did not agree with Dr Lai’s description of the process of reaching this result as a fight; he considered that this was part of the normal negotiation process which happened after the issue of a start letter (day 21, p.19 line 2 to p.21 line 2).

189. Given the undisputed projected surplus of teachers in 2012/13, and the fact that the dissatisfaction with the EMB's suggested teacher education places for 2008/09 rollover year appeared to have been shared by the TEIs, it does not seem possible to conclude that there was any targeting of the HKIEd in this regard.

*“Zero” places for part time (in-service) C(ECE) in 2007/08*

190. The First Start Letter indicated that no places would be allocated to the part time (in-service) C(ECE) program in 2007/08 [U2/170 at 175]. The program was one which was provided solely by the HKIEd at the time, and the “zero” struck at the core business of HKIEd. The difference between a provision of “zero” and a provision of “200” (which had been made for the first two years of the triennium) translated approximately into \$84m (\$28m x 3 years) (Dr Lai, day 19, p.64 lines 4 to 23).

191. It is said by the EMB that the “0” was the result of a miscommunication, and that this was subsequently rectified and a provision of “200” was reinstated. See Mrs Law's third statement para. 28 [W1/262]. Mrs Law testified that she was not involved in deciding the “zero” provision, and she did not realize that there had been a miscommunication until this Inquiry; when the matter was brought to her attention in March 2004, it was put on the basis that there had been an incomplete manpower projection (day 29, p.166

line 5 to p.167, line 11). She would, however, have approved the draft policy committee paper which contained the “zero” provision, as would Prof Li (day 30, p.38 line 10 to p.39 line 9); the two would not have discussed the matter though (day 31, p.1 line 17 to p.2 line 7).

192. There are two issues for the Commission to consider: (a) whether the “zero” provision was a mistake and whether the provision was an attempt to disadvantage the HKIEd, and (b) why there was delay before the provision of 200 places was made, and whether this delay was an attempt to disadvantage the HKIEd. We deal first with the question of whether there was a mistake.

193. The original advice was sent from Mrs Miranda Liu of branch 5 of the EMB to Mr Sheridan Lee of branch 3 on 22 August 2003, saying that 100 in-service places should be provided from 2005 to 2008 to cater for KG teachers, and about 100 in-service C(ECE) places should be provided from 2003 to 2006 to train up all KG principals and child care supervisors [EMB8/56]. This was passed on in a memo from PAS(PDT) (branch 3) to PAS(HE) (branch 1) on 6 September 2003 [U2/75]. Mrs Liu says that she did not specify whether the places for the KG teachers were to be QKT (Qualified Kindergarten Teacher) or C(ECE) places, intending that flexibility would be given to the UGC and the HKIEd (second statement, para 8 [W2/276]). If the KG teachers took the C(ECE) as well, this advice would have resulted in **200, 100 and 100** places

for the 3 years in the 2005/06 to 2007/08 triennium.

194. On 3 October 2003, Mr Sheridan Lee extracted the relevant part of the memo to ask Mrs Miranda Liu whether her advice had been correctly reflected [EMB8/55]. The extract read “About 100 in-service training places should also be provided annually to cater for untrained KG teachers, including non-Chinese-speaking KG teachers. As a follow up to the in-service C(ECE) training that is to begin in the 2003/04 academic year, a further 100 places should be provided in 2005/06 to complete the training of all KG principals and child care supervisors”. Again (and assuming the provision for the KG teachers was C(ECE) places), this would have resulted in **200, 100 and 100 places** for the 3 years in the 2005/06 to 2007/08 triennium.

195. Mrs Miranda Liu replied, suggesting an amendment to the second sentence: “As a ~~follow up to~~ for the in-service C(ECE) training ~~that is to begin in the 2003/04 academic year,~~ a further 100 places should be provided in 2005/06 and 2006/07 to complete the training of all KG principals and child care supervisors” (underlining added) [EMB8/54].

195.1. According to Ms Charmaine Wong’s note on 10 February 2004 of her telephone conversation with Mrs Liu, the additional 100 places in 2006/07 was to provide a buffer in case some principals missed the 2005/06 class [U2/186].

- 195.2. No amendment was suggested to the first sentence extracted in Mr Sheridan Lee's email. According to para. 10 of Mrs Liu's second statement, this was because she had no amendment to make [W2/277].
- 195.3. Taken together, the revised advice would have resulted in **200, 200 and 100 places** for the 3 years in the 2005/06 to 2007/08 triennium.
196. Subsequently, in the 13 October 2003 memo regarding the policy committee paper for the 2005/06 to 2007/08 triennium, the relevant sentence read "As regards in-service C(ECE) training, a further 200 places should be allocated in 2005/06 and 2006/07 to complete the training of all KG principals and child care supervisors" [EMB3(1)/173]. This would have resulted in **200, 200 and 0 places** for the 3 years in the 2005/06 to 2007/08 triennium.
197. This wording was adopted in the EMB's formal advice to the UGC on 20 January 2004 [EMB3(1)/243]. This would have been after the policy committee paper, containing these figures, was cleared by Mrs Law and Prof Li.
198. On 4 February 2004, Mrs Miranda Liu of the EMB was telephoned by KG principals, whereupon she became aware of the 200, 200, 0 provision: see para.12 of her second statement [W2/277]. She

reported the matter to Mr Andrew Poon, her supervisor. Mr Sheridan Lee sent her a copy of the 13 October 2003 memo. See para. 12 of Mrs Liu's second statement [W2/277] and Mr Lee's email of 4 February 2004 [W2/281 = EMB8/58]. Mrs Liu (para. 20 of her second statement) says that she checked with Mr Lee (it is not entirely clear when) and learnt that he had assumed that the places for the KG teachers were to be C(ECE) (that is, the same as the places for the KG principals and childcare supervisors), hence the provision for "200" in the first two years of the triennium. However, he had overlooked the provision for the last year of the triennium. Mr Sheridan Lee confirmed this (paras. 8-9 [W2/304]). Mr Andrew Poon said that he realized the discrepancy in February 2004, upon finding out about the "0" provision from a newspaper report at the end of January and asking for documents from Mr Sheridan Lee (day 36, p.15 line 25 to p.16 line 22).

199. This would suggest that there had been a mistake on the part of Mr Sheridan Lee. However, subsequent events do not appear to bear this out.
200. On 10 February 2004, Miss Charmaine Wong of the UGC recorded that she had checked with an EMB officer the allocation of 200, 200 and 0 and had been told that the rationale for the proposed allocation was that it was Government's policy that all kindergarten principals were to obtain the C(ECE) by 2005/06 and that "buffer" places were provided in 2006/07 in case some serving principals

missed the 2005/06 class [U2/186]. Miss Wong was able to identify the EMB officer as Mrs Miranda Liu: see para. 45 of her second statement [W2/203]. Mrs Miranda Liu recalled having dealings with Miss Wong in February 2004 but had no recollection of the conversation recorded by Miss Wong, although she did not deny that it could have been her (para. 15, second statement [W2/278]). According to Miss Wong's note of the conversation, there was no suggestion that an error had been made. And even if Mr Lee had made an error, Mrs Liu would surely have clarified this in the conversation, because she would have known that the "0" did not correctly reflect her original advice to Mr Sheridan Lee.

201. Whilst Mr Andrew Poon was apparently aware of the discrepancy between Mrs Liu's original advice and the "0", at a meeting with Prof Lorna Chan of the HKIEd on 27 February 2004, he apparently sought to justify the "0" at the meeting on policy grounds, which would mean that the "0" was *not* a mistake: see description of the meeting in Prof Chan's letter of 1 March 2004 [EMB8/61]. In the same letter, Prof Chan pointed out that the 200 places allocated to the first two years of the triennia were also inadequate, given the huge numbers of applications for the courses in earlier years.

202. As Mrs Law said in testimony (day 30, p.46 lines 10-19), the problem was not presented to her as a mistake or miscommunication, but as an under estimation. Mr Andrew Poon wrote a file minute on 1 March 2004 to Mrs Law asking for

approval to increase the places for the C(ECE) from 0 to 150 (presumably in 2007/08), and for the part time QKT course from 0 to 300 (spread out over the 3 years of the triennium). Mrs Law testified that this was the first time she became aware of the problem (day 29, p.168 line 10). Mr Poon stated the justification for the review to be that the approved allocation could not fully cater for training needs, and admitted that the manpower projection on KG teacher training given to the UGC was “incomplete”. He had not seen the advice before submission to the UGC and hence not spotted the “under-estimation” [EMB8/64]. There was no mention of any mistake or miscommunication.

203. Even if there had been a mistake by Mr Sheridan Lee in late October 2003, why was it not spotted before the advice was given to the UGC and in turn passed on to the institutions? Mrs Law suggested that the nil provision would not have been noticed by anybody as it went up through the various levels of the EMB because it was accompanied by an explanation that the policy target (to train up all KG principals and childcare supervisors by 2005/06) had been met (day 30, p.72 line 22 to p.73 line 5). If this is so, the incident highlights a serious problem with the system for producing manpower planning projections within the EMB.

204. Furthermore, even if there had been a mistake by Mr Sheridan Lee in late October 2003 *and* it was not spotted as it worked its way upwards through the EMB and into the Policy Committee Paper,

why was it not described as such upon “discovery”? We therefore submit that the Commission should not accept the claim that the provision of “0” in-service C(ECE) places in 2007/08 was the result of a miscommunication or mistake at least in respect of the period after 4 February 2004, when the problem had been brought to the attention of Mrs Miranda Liu of the EMB. Whilst the origin of the mistake in late 2003 is attributed to Mr Sheridan Lee, there has been no satisfactory explanation of why in February and March 2004, after Mrs Miranda Liu and Mr Andrew Poon realized what had happened, they continued to seek to justify the “0” rather than to correct the mistake.

205. However, whatever the reason for the failure to correct the “0” may be, it does not appear that this was an attempt to disadvantage the HKIED, at least not by Mrs Law. Officers of the EMB were trying to justify the “0” provision in February 2004, before Mrs Law was alerted to the problem. It therefore does not appear that the exercise in justification was carried out on Mrs Law’s orders.

206. As to the reasons for the delay before 200 places were announced as provision for 2007/08, the relevant events are as follows.

207. Mrs Law testified that she could not respond to Mr Poon’s file minute of 1 March 2004 until she could be sure of funding (day 30, p.56 lines 11-15). On 3 March 2004, Mr Poon, who had not received any response from Mrs Law to his file minute of 1 March

2004, wrote a further file minute, saying that the funding for the additional places would come from the UGC and that the issue was “a potential crisis” if no adjustment was made, and the actions to be taken by various stakeholders “cannot be underestimated”. In this file minute, Mr Poon had trimmed down his earlier recommendation, suggesting adding only 50 QKT places for each year of the triennium and 100 C(ECE) for 2007/08. Mrs Law said that the fact that the places were to be funded by the UGC did not solve the problem, because that money still ultimately had to come from the EMB envelope (day 30, p.58 line 12 to p.59 line 9). She became aware of the urgency of the matter and the possible political repercussions and at that point brought it to Prof Li’s attention.

208. On 5 March 2004, there was an internal meeting in the EMB. PAS(PDT) (Ms Susanna Cheung) was recorded as agreeing that resources reserved under the PUCs could be reallocated to ECE programs subject to Mrs Law’s endorsement [EMB8/70].
209. On 8 March 2004, Ms Susanna Cheung and Ms Miranda Liu, amongst others, met with Prof Lorna Chan and Prof Phil Moore. Ms Cheung’s note recorded that whilst HKIED “did not care” about the QKTs, they sought places for the C(ECE) as their course had been over subscribed; Miranda had advised that it would be “safe” to allocate 100 or 110 places in 2007/08 [EMB8/71].

210. On 9 March 2004, Mr Andrew Poon reported the meetings of 5 and 8 March in his file minute to Mrs Law [EMB8/67]. He further warned that the sentiment of the sector was being “stirred up” by stakeholders in the field. By that stage, things had become highly political (Mrs Law, day 30, p.60 line 18).
211. On 11 March 2004, Mr Cheung Man Kwong of the Professional Teachers’ Union (“the PTU”) wrote a letter to Mrs Law expressing regret and dissatisfaction with the ECE provision for the 2005/06 to 2007/08 triennium, and seeking a meeting [EMB8/76].
212. Some time before 12 March 2004, Mrs Law had discussed the matter with Prof Li and in view of the pressure that was being applied to increase ECE teacher training, the decision was taken to maintain the level of investment in ECE teacher training for the 2005/06 to 2007/08 triennium at the same level as in 2004/05. This was Mrs Law’s deduction based on the note of a meeting on 12 March 2004 [EMB8/223]; no notes were taken of her meeting with Prof Li or the decision to maintain the level of ECE investment. The idea was to use the money from the savings from the cut in PUCs, and seek to lobby the Financial Secretary later for exemption from the savings target (Mrs Law, day 30, p.63 line 15 to p.72 line 16). (Not until November 2004 would the Financial Secretary confirm that the provision for education would be maintained at the same level for the 2005/06 to 2007/08 triennium.)

213. On 16 March 2004, a note was prepared by the PDT division proposing that no part-time QKT places be provided but that 200 part-time C(ECE) places be reinstated, and that they be funded by savings from the cessation of other undergraduate courses in the 2005/06 to 2007/08 triennium [EMB8/239].
214. Mrs Law did indeed decide that 200 part-time C(ECE) places would be restored for 2007/08, but no part-time QKT places would be provided (day 29, p.171 line 10 to p.172 line 14). On 17 March 2004, the UGC was advised that the 200 places would be restored [EMB3(2)/316]. The HKIEd was informed of the restoration on 24 March 2004 [U2/262].
215. Meetings with ECE stakeholders took place on 25 and 26 March 2004, at which they were informed that the Government would provide 200 UGC-funded places, and that the Government's overall expenditure on training in the ECE sector would remain unchanged in the 2005/06 to 2007/08 triennium [EMB8/78, 80, 82] (and see Mrs Law, day 31, p.74 line 10 to p.76 line 19).
216. Whatever the reason for the original "0" provision may have been, it does not appear that the delay in announcement of a further 200 in-service C(ECE) places in 2007/08 was because it was sought to keep the provision at "0" to disadvantage the HKIEd and put pressure on it to merge. A request to Mrs Law to change the "0" was not made until 1 March 2004, and the provision of 200 places

was notified to the UGC on 17 March 2004. During those 17 days, there was internal discussion within the EMB and consultation with the HKIEd.

*Reduction in places for part time (in-service) C(ECE) from 369 to 200 and use of savings for alternative provider*

217. A related complaint in relation to the ECE numbers is that whilst the “0” for part time C(ECE) was reinstated to “200” in 2007/08, this was still a reduction in that the allocation of UGC-funded C(ECE) places was reduced from 369 in 2004/05 to 200 in each of the 3 years in the 2005/06 to 2007/08 triennium. What is more, there was a decision that the savings from the reduction in places, together with the savings from the elimination of 204 QKT places, were to be used to fund an alternative provider.

218. It was not the case that there was no demand for C(ECE) places. It was acknowledged by Mrs Law that there was demand, hence the decision to succumb to political pressure in March 2004 and pledge the maintenance of funding on ECE training throughout the triennium (day 30, p.36 lines 15-16; p.66 line 23 to p.67 line 2; p.68 lines 4-10). Prof Lorna Chan had told the EMB of the huge oversubscription of the HKIEd’s part-time C(ECE) at the meeting on 8 March 2004. Yet whilst it was decided to maintain the 2004/05 level of funding for the new triennium, the number of C(ECE) places was not maintained at the 2004/05 level (of 369

places) and instead there were to be only 200 places for each year in the new triennium; similarly, the number of QKT places was eliminated altogether (there had been 204 places in 2004/05) [EMB8/239].

219. The total savings from the C(ECE) reduction and the QKT elimination were \$107.49m [EMB8/240-242] (Mr Andrew Poon, day 36, p.31 line 19 to p.32 line 4). These were used to procure C(ECE) places by tender. Dr Lai described this action as follows: “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” (day 19 p.66 lines 1-6).
  
220. There is little contemporaneous evidence to explain the thought processes behind the decision in 2004 to maintain the level of investment in ECE at the 2004/05 levels and to use the savings from the reduction in C(ECE) and QKT places to obtain additional C(ECE) training places from providers other than the HKIEd. We would point out that Prof Li said that the final decision to obtain such places by means of open tender was not made until 2005. However, at the very least, it had been decided in 2004 that providers other than the HKIEd would be brought in; and tender was one of the methods contemplated for seeking such providers:

- 220.1. On 11 March 2004, Mrs Law sent an email to Chris Wardlaw, asking, inter alia, “Should HKIEd be the sole provider? If not, which other institution should run the programmes – PolyU, IVE?” [EMB8/237].
- 220.2. On 17 March 2004, Mrs Law sent an email to Ms Yvonne Ng (with a subject heading “Re: CONFIDENTIAL: HKIEd”) recording that she had spoken to Prof Li who “fully agreed that we should use the balance of funds (468-200 places) to finance another training provider” [EMB3(2)/318]. (The correct calculation should have been 369-200 and was corrected in Miss Charmaine Wong’s email of the same date [EMB3(2)/317].)
- 220.3. Prof Li accepted that when he made the decision that the investment in ECE teacher training would be maintained at the 2004/05 level and that savings (from the reduced places) would be used to support an alternative training provider, he did not have facts and figures before him (day 34, p.162 line 10 to p.164 line 3).
- 220.4. It will be recalled that Dr Leung testified that it was some time between his meeting with Prof Li on 23 February 2004 and the retreat on 24 April 2004 that Mrs Law called him to tell him that ECE was being opened up to tender (day 26, p.27 lines 6 to 15, p.31, lines 7 to 16). Mrs Law said that

she thought the HKIED was aware that competition would be introduced, although she was not sure whether they had specifically been told whether a separate provider would be brought in or whether tender would be used. She did not recall the specific telephone conversation with Dr Leung but did not dispute it; and reasoned that if she had called to raise the issue of the cost of the HKIED's courses, the idea of tendering would already have come up because all UGC places were funded at a standard rate so there was no point complaining about the HKIED's costs if the EMB was continuing to fund places through the UGC (day 30, p.75 line 19 to p.77 line 9).

220.5. On 25 and 26 March 2004, there were meetings between EMB officials and ECE stakeholders at which the latter were told of the maintenance of ECE investment at 2004/05 levels and the provision of 200 UGC-funded places (see letters sent to stakeholders [EMB8/78 and 80]). At the meeting of 26 March 2004, the possibility of tendering was discussed [EMB8/82]. Mr Andrew Poon recalled that there had been some discussion of this as an option within the EMB although he could not remember any details (day 36, p.34 lines 9-13).

221. A paper dated 14 January 2005 was prepared by the QA Division (PSEM Paper No.1/2005) discussing 3 options for the provision of

additional training the ECE sector for the 2005/06 to 2007/08 triennium [EMB8/244]. The first option suggested was to increase the UGC-funded training places (which would have benefited HKIEd and PolyU), the second was to increase the subsidized training places at the Government-subsvented Institute of Vocational Education, and the third was to procure places by tender. The paper recommended the provision of 150 places under the second option, and 215 places under the third option. The first option was not recommended as it was said not to achieve diversity or cost-effectiveness. Ultimately, it was decided that all places would be sought by open tender [EMB8/243].

222. 760 places for the C(ECE) for the 2005 intake were ultimately awarded using the surplus funds, but only 120 of these were awarded to the HKIEd [EMB8/134-85]. Mrs Law explained that whilst the HKIEd had bid for 280 places and the EMB had recommended awarding them 240, the Secretary for Financial Services and the Treasury advised that the EMB should consider further negotiation with the 3 tenderers [EMB8/134-54]. The Central Tender Board advised that the EMB should negotiate with the lowest tenderer to provide as many training places as possible, then the second lowest, and then only with HKIEd in the last resort [EMB8/134-61]. The HKIEd stood firm on price, and ultimately was awarded only 120 places. See Day 31, p.161 line 4 to p.167 line 9.

223. There is no evidence that the tender process was unfair. The fact that it resulted in an award of 120 out of 760 places to the HKIED was not because of any attempt to harm the HKIED. It would also appear that the final decision to seek the provision of these places by tender was one made in 2005 after some consideration within the EMB. But the real question is why it had already been decided back in 2004 that whilst there was demand for ECE training places, so that the investment in ECE should be maintained at the 2004/05 levels, the investment would no longer be funded through the UGC (with the HKIED being the sole provider), and instead, competition would be brought into the field.
224. Mrs Law considered that this mode of proceeding achieved value for money and at the same time expedited the upgrading of the ECE teaching force (day 29, p.180 lines 13-19). There is only so far that one can take this logic, because it would no doubt apply to the provision of teacher education in any other field. Furthermore, it seems somewhat contrary to the policy of encouraging role differentiation amongst institutions, which after all was one of themes of the Sutherland report.
225. We would submit that question marks remain over the reasons why Prof Li and Mrs Law decided to introduce competition in ECE training, which was a core area of HKIED's expertise, in 2004, and to fund these places using savings from ECE courses which would have gone to the HKIED had the 2004/05 provisions been followed.

The decision taken meant that some \$107m would be used to fund a provider other than the HKIED, but this was done without any prior study as to fundamental considerations such as whether the field should be opened up to competition, whether any of the funds should nevertheless be reserved for places at the HKIED, or how many places were needed by the market or should be provided as a matter of policy. Furthermore, the decision was taken at a time when the Government was under severe budgetary constraints. On Prof Li's own evidence, every single cent of spending was supposed to be accounted for, and if money was left over upon achievement of a policy objective, the department concerned was not free to use the money (if the amount exceeded \$10m or \$15m) and instead had to return it to the central government funds (day 33, p.46 lines 7-25). When this was put to him, Prof Li said that whilst there was no policy in place as regards the savings from the ECE places, the savings had already been allocated to ECE (day 34, p.161 line 14 to p.162 line 9). This is beside the real point, which is that at a time when it was vital to ensure that every cent of public money was being put to good use, on what basis was it decided that the \$107m would be better used on a provider other than the HKIED, if no studies were carried out about other providers, market needs, or policy objectives?

226. It has to be pointed out that if one were to consider the matter solely from the point of view of why 200 places were allocated in each of the 3 years of the 2005/06 to 2007/08 triennium, it does not

appear that these were set so as to single out the HKIED for disadvantageous treatment in order to put pressure on it to merge:

226.1. the provision of 200 places for the first two years of the 2005/06 to 2007/08 triennium, whilst lower than the provision in 2004/05, was based on Mrs Liu's original advice of 22 August 2003, which in turn was based on a policy objective set some years ago regarding the training of KG principals, teachers and child care supervisors;

226.2. the provision of 200 places in the final year was already an increase from the 150 suggested by Mr Poon and was based on Mrs Law's perception of need and the UGC's urging to level the figures across the triennium (day 30, p.49 lines 17-25).

227. We submit that ultimately, whilst question marks remain, there is insufficient evidence upon which the Commission can safely make a finding that the decisions (a) to reduce the allocation of UGC-funded C(ECE) places from 369 in 2004/05 to 200 per annum in the 2005/06 to 2007/08 triennium, and (b) to use the savings from the reduction in C(ECE) places and the elimination of QKT places to fund an alternative provider, were actions taken deliberately to disadvantage the HKIED or as a means of applying pressure on the HKIED to agree to a merger.

*Request for relaxation of role differentiation, and secret meetings with potential ECE providers*

228. Subsequently, in 2006, the EMB took further steps to enlarge the pool of ECE teacher training providers. Prof Li said that this had nothing to do with the decision in March 2004, but was a result of the review of pre-primary education which took place in 2005 (day 37, p.132 lines 18-25) Mrs Law said that because a substantial expansion in the number of ECE training places was being contemplated, it was necessary to carry out preparatory work beforehand to see whether this would be feasible, and this explained the meetings which she had with potential service providers in May and June 2006 (day 31 p.183 line 16 to p.184 line 8). There was also a desire to provide programs at graduate and postgraduate levels (Mrs Law's letter of 14 May 2007 [W2/174 at 175]).

229. Whilst the desire to introduce further service providers may be understandable in the light of this background, the issue here is why the HKIEd, which had an acknowledged expertise in ECE training, was not also invited to the preparatory meetings.

230. The first of these meetings took place on 20 May 2006. Mrs Law met with the representatives of HKU, CUHK and PolyU. Miss Charmaine Wong of the UGC was also present and took a note [E3/276]. She recorded that Mrs Law, when asked why HKIEd had

not been invited, had “said frankly that she had doubts on the quality of pre-primary education programmes currently provided by HKIEd. She said that if she involved HKIEd at this stage, HKIEd would be very defensive which might derail EMB’s efforts to improve early childhood education. She wished to see higher quality providers entering the market of pre-primary education.” After the meeting, Mrs Law asked Miss Wong to stay behind for an internal meeting with her and the two PASs. They discussed the 35 FYFDs which were to be deployed for early childhood for 2008/09; Mrs Law expressed a view that the places should be allocated to CUHK to collaborate with PolyU. Upon Miss Wong’s explanation that it might be difficult for PolyU to squeeze more places for early childhood, Mrs Law expressed the view that the 35 places should perhaps be given to HKU as it was the only TEI offering training in educational psychology and it was “poised to attract quality students”. Miss Wong then recorded “She [Mrs Law] was very negative on HKIEd. Thus, collaboration between CUHK and HKIEd was not on her mind.”

231. Mrs Law has said that Miss Wong misunderstood her as what she had referred to was the quality of the student intake at the HKIEd: see Mrs Law’s letter at [W2/177]. There is some support for this in the statements of a few of the other participants to the meeting: see statements of Prof John Lee [W2/240] and Ms Sylvia Tsoi Cheung [W2/288]. However, Mrs Law did not deny that she had expressed views as to which institutions should be allocated the 35 FYFDs

for ECE for 2008/09; and these did not include HKIEd. She said that the reason for this was the desire to retain PolyU's expertise and to increase competition (day 30, p.33 lines 12-22).

232. Following on from the meetings, Mrs Law wrote to the UGC on 17 July 2006 to request a relaxation of the role differentiation requirement to support the programs proposed by PolyU and HKU [EMB8/200]. This had the blessing of Prof Li (Mrs Law, day 31, p.82 lines 18-22). The UGC agreed to this, but only reluctantly: [EMB8/202]. Dr Lam thought that the UGC felt that there was a certain degree of urgency to map out the programs, so they acceded to the request despite their reluctance and the fact that PolyU was not even a TEI (day 23, p.80 lines 17-25).

233. We would submit that the evidence justifies a finding that Mrs Law's intention was to give the three universities (CUHK, PolyU and HKU) a head start in considering what courses they might wish to provide in the area of ECE. Even if, as Mrs Law claims, HKIEd and Hong Kong Baptist University were not invited because the EMB was already aware of their capacity, they were deprived of the time which the three universities had to consider what programs they might wish to put forward in response to the initiatives in the Chief Executive's 2006 policy address.

234. However, this was not a situation which would have led to the HKIEd's student numbers being cut. The ECE "pie" was about to

get bigger, and there is nothing to suggest that the HKIED's student numbers were to be allocated to the three other institutions to support their programs. Whilst the addition of new service providers to the market would have introduced competition and pressure on the HKIED, there is no real basis on which to conclude that this was improper pressure aimed at forcing it to merge.

*Reduction in PUC places*

235. The HKIED was given an intake of 440 ftes for its professional upgrading courses in 2004/05. This was reduced to 350 ftes in each year of the 2005/06 to 2007/08 triennium (Dr Lai's first statement, para 27 [W1/201]. The funds were then used to seek the provision of similar courses, by tendering, although the courses were apparently in different areas: Mrs Law, day 30, p.89 line 14 to p.90 line 10.
236. Since the HKIED was the only institution offering PUCs (Dr Lai, day 19 p.82 lines 16-18), a reduction in PUCs would affect the HKIED alone. As Mr Michael Stone confirmed (day 21, p.16 lines 1-14), the reduction in the PUCs was a decision of the EMB and the UGC did not challenge it.
237. Para. 18 of the allocation letter of 7 May 2004 [U2/350 = MLB/121] recorded the UGC's appreciation of the HKIED's agreement to reduce the target enrolment to 350 ftes per annum.

However, as Dr Lai explained, this was not a voluntary reduction, but rather, since the HKIED was seeking an increase of its student numbers in other areas, a tactical decision not to argue for numbers on this front as well (day 19, p.79 line 3 to p.80 line 2).

238. Whilst some of the HKIED's PUCs were outdated and the student enrolment declining, this could not fully explain the reduction, because the HKIED was constantly revamping the programs (Dr Lai, day 19, p.80 line 6 to p.81 line 10).

239. Mrs Law's steer was sought in September 2003 when the decision to reduce the number of PUCs funded through the UGC for the 2005/06 to 2007/08 triennium was made [EMB3(1)/152]. The decision also had the agreement of Prof Li (Mrs Law, day 30, p.80 lines 9-13). Her explanation of the reduction was that this was in accordance with EMB policy and UGC's view as far back as the 1998-2001 triennium that the number of PUCs run through the HKIED should be decreased (day 29, p.160 line 15 to p.162 line 15). The choice of "350" was not, however, based on any scientific calculations, but was essentially an exercise of judgment based on the degree of under-enrolment and the degree of demand in other areas; no papers were produced which considered this figure (day 29, p.84 line 19 to p.86 line 10).

240. In view of the fact that the number of PUCs funded through the UGC had been on the decline for some time and that the courses

were run by the HKIEd primarily for historical reasons (having inherited them from the former teachers' colleges), which became less appropriate as the HKIEd upgraded itself, and the HKIEd itself attached less importance to this area of reduction than to other areas, it seems difficult to conclude that the reduction was carried out with a view to put pressure on the HKIEd to merge.

*Senior year (articulated) places*

241. Prof Morris complained that the HKIEd had repeatedly applied for, but was refused, senior year (also called articulated) places (places which would allow students of an institution doing an associate degree program to opt to move to a degree program without having to repeat the first year), and that it was the only institution which had been refused these (day 8, p.55 line 24 to p.57, line 9).
242. This does not, however, appear to be an example of targeting of the HKIEd. In fact, none of the teacher education providers were allowed to have senior year places (Mr Michael Stone, day 21, p.16 line 15 to p.17 line 8). The rationale was that otherwise, this might disturb the number of teachers set by the manpower planning parameters (day 22, p.46 line 25 to p.47, line 14). This had been explained by the UGC's Core Group on ADPs to the HKIEd at a meeting on 20 April 2004 [U2/303 at 304] (and repeated in the allocution letter of 7 May 2004 [U2/350 at 354]. Whilst the UGC's decision in this regard was influenced by the EMB's policy

considerations, it was not a decision which sought to single out the HKIED for disadvantageous treatment.

243. This issue was not pursued by leading counsel for Profs Morris and Luk in the cross examination of Mrs Law.

*Research postgraduate places*

244. Prof Morris complained that the HKIED had sought, but been refused, research postgraduate (RPg) places: day 8, p.57 line 16 to p.58, line 13.

245. This appears to have been a policy decision of the UGC, which considered that this flowed from the role statement of the HKIED, which had been agreed with the HKIED: Stone, day 21, p.16 line 15 to p.17 line 19).

246. This issue was not pursued by leading counsel for Profs Morris and Luk in the cross examination of Mrs Law.

*University title*

247. Prof Morris complained that the HKIED had sought, but been refused, university title: day 8, p.57 lines 18 to 19. Prof Li's response to this was that he had an open mind on the matter, but it was insufficient for the HKIED to simply ask for university title; it

had to put forward a plan for its future and to address concerns (day 37, to p.83 lines 5-21). Ultimately, it is submitted that this issue is not in fact relevant to the First Allegation.

*Part time PGDE, mixed mode, add on*

248. Prof Morris had also complained that the places for the HKIEd's programs in part-time PGDE, mixed mode (for students to upgrade their certificate to B Ed degrees), and add-on B Ed had been cut (day 8, p.99 line 16 to p.100, line 19). It was put to Prof Morris that the numbers for the part time PGDE had only decreased slightly (day 8, p.105 line 13 to p.106, line 10), that the numbers for the mixed mode programs had in fact increased (day 8, p.100 line 22 to p.101, line 12), and that the add-on B Ed had been converted to a four-year program because the HKIEd had admitted that it was unable to fill the two-year program (day 8, p.107 line 21 to p.108, line 21).

249. These issues were not pursued further by Dr Lai in his witness statement or by leading counsel for Profs Morris and Luk in the cross examination of Mrs Law.

*Unknown criteria for awarding tenders*

250. Prof Luk's presentation to LegCo in February 2007, adopted by Prof Morris, complained that the EMB tendering process lacked

transparency and that the HKIEd did not know the criteria by which the bids were assessed [MLA1/142]. Prof Morris repeated the complaint on day 9, p.142, lines 11-12.

251. However, it appears that the tender documents did explain these criteria. See for example [EMB8/87 at 96-98].

### *Independence of UGC*

252. It is Prof Morris's case that the fact that it was the UGC which decided how to allocate student numbers between the eight institutions it funds was not an answer to his complaints that the allocations were an attempt to disadvantage the HKIEd, because the UGC merely acted on the advice of the EMB.

253. According to Mrs Law, the only instance when she expressed a strong view as the allocation of student numbers between institutions was in her email [EMB3(1)/166] when she described the increase in allocation to the HKIEd as "outrageous"; however, this was after the allocation had already been made. However, there was also the meeting of 20 May 2006 when Mrs Law told Miss Charmaine Wong how she thought the 35 FYFDs for ECE in 2008/09 should be allocated [E3/276]. Whilst she attempted to downplay these views as being informal (day 30, p.94 lines 1-7), it is noteworthy that Mr Michael Stone considered these to be "strong views" and drafted a start letter which would not conflict with

these views [EMB4(2)/493].

254. However, it is submitted that the UGC could not be considered to be a mere rubber stamp of the EMB. Whilst the UGC has to work within the parameters of the manpower planning projections given to it by the EMB for a number of disciplines (of which teacher education is but one), and this could be restrictive to the extent that Mr Michael Stone once recorded that “education provision is the most contentious manpower planning area and the one the Government meddles the most in” [U3/218], the evidence shows that the allocation of student numbers between institutions is decided by the UGC after consideration of information papers and debate. The UGC is a non-statutory advisory body. Its members are appointed by the Chief Executive, but they are drawn from outside the Government, comprising persons who are accomplished in their respective fields, many of whom are academics and higher education administrators [UA/3]. The members serve as a form of public service; they do not get paid (save that overseas members receive an honorarium and reimbursement of travel and hotel expenses: Mr Stone, day 21 p.2 line 12 to p.3 line 7). There is not really any basis on which it could be said that they are merely the puppets of the EMB.

255. Mr Michael Stone testified that the UGC did not ask the EMB as to whether X or Y places should go to X or Y institutions: day 22, p.84 lines 3 to 5. It should be pointed out, though, that the EMB’s

breakdown of teacher education places required by KLA can mean that there is little flexibility for allocation as regards non-mainstream subjects: if only 10 music teachers are forecast to be needed in any particular year then it is unlikely that the UGC can allocate these to more than one institution.

### Conclusion on the First Allegation

256. Because of the nature of the First Allegation, the evidence has to be sufficiently cogent before the Commission can reach the conclusion that it has been proved. (See HKSAR v Lee Ming Tee (2003) 6 HKCFAR 336.) It is submitted that in the light of:

256.1. the objective background as at 21 January 2004;

256.2. the fact that the FYFDs for primary level B Ed were actually increased;

256.3. the fact that on Prof Morris' own evidence, the connection between the "cut" and the agreement to "merge" was a matter of interpretation;

256.4. Prof Morris' sensitivity as at 21 January 2004,

there is insufficient cogent evidence as regards the telephone conversation of 21 January 2004 between Prof Li and Prof Morris

to conclude that Prof Li had interfered with the institutional autonomy of the HKIED.

257. Further, the evidence as to the subsequent conduct of Prof Li and Mrs Law with regard to student numbers, whilst giving rise to legitimate questions and reasonable suspicion as far as the student numbers in the field of early childhood education are concerned, is also insufficiently cogent to justify the drawing of an inference that actions have been taken by Prof Li or Mrs Law to “cut” student numbers in order to put pressure on HKIED to undergo a merger.

258. Nevertheless, this is not the end of the matter. The Commission is required, under para. (a) of its terms of reference [CB/1], to ascertain the facts relevant to the Three Allegations; and under para. (b), to ascertain, whether on the facts as found, there has been improper interference by the SEM with the academic freedom or the institutional autonomy of the HKIED. We submit that, for the reasons stated above, there can be no doubt that Prof Li did say to Dr Simon Ip in July 2002 that the HKIED would be raped if it did not agree to a merger, meaning that a merger would be imposed on it irrespective of its wishes. We respectfully submit that this in itself constituted an improper interference by Prof Li with the institutional autonomy of the HKIED. Under the Hong Kong Institute of Education Ordinance, the Council is designated as the executive governing body of the HKIED. Whilst Prof Li, as the SEM, was fully entitled to seek to influence, or persuade, the

HKIED Council of the benefits of a merger, what he did on this occasion was to signify an intention of forcing the HKIED into a merger.

## **Section 6: The Second Allegation**

259. There are four particularized occasions under this Allegation.

These are:

259.1. on 30 October 2002 – concerning Mr Ip Kin Yuen and Dr  
Lai Kwok Chan,

259.2. in late 2004, concerning Dr Wong Ping-man, probably on  
19 November 2004;

259.3. in November 2004, concerning Prof Cheng Yin-cheong,  
and

259.4. on 21 April 2005, concerning Mr Ip Kin Yuen and Prof  
Cheng Yin-cheong. [CB/5/159]

260. In addition, Prof Morris and Prof Luk both spoke of other occasions, the specifics of which they cannot recall, where there were similar demands allegedly made by Mrs Law of Prof Morris: day 6 p.35 line 20 to p.36 line 2.

### Prof Magdalena Mok's evidence

261. There is also evidence of a similar demand made by Mrs Law of Prof Magdalena Mok. Prof Mok and Mrs Law were classmates for

7 years in a local secondary school. They have kept in touch as friends and Mrs Law had, from time to time, contacted Prof Mok on educational matters. Prof Mok deposed to a telephone conversation some time between early 2004 and mid 2004 (day 17 p.148 lines 4-10) in which Mrs Law asked her to fire Mr Ip Kin Yuen, or have him dismissed, using the word “炒” (day 17 p.141 line 14). Prof Mok was adamant that one of the reasons given by Mrs Law for that request was because Ip had published a number of articles against government initiatives and she was very angry at that (chief day 17 p.142 lines 7-9, xx day 18 p.20 lines 20-25, day 18 p.28 lines 6-8, day 18 p.29 lines 7-12). It is highly likely that the trigger of the call was the publication by Mr Ip of the article entitled “推卸責任?” [E1/76] at which Ip wrote about a private telephone conversation he had with Mrs Law but without disclosing her identity. Mr Ip wrote the piece intending it as a rejoinder to that phone call which had been abruptly put to an end by Mrs Law. There is no doubt that Mrs Law was very angry with Mr Ip for publishing the article.

262. Prof Mok’s evidence is that this demand for dismissal was a serious one: day 17 p.153 line 2. It was not one in which Mrs Law was asking for advice from a friend: day 17 p.156 lines 8-15.

*“If we were friends and we were talking how to deal with situations, we would talk in another tone. For example, I would imagine she would say something like, “This Ip Kin Yuen is bothering me. Can you help me to have a word with him and ask*

*him not to write these articles? Why is he doing that?” etc. It would be more kind of a negotiation, rather than saying, “I want you to dismiss him.”*

263. Prof Mok’s evidence is clear: There was only one thing Mrs Law wanted, that is to fire Ip Kin Yuen (day 18 p.65 lines 13-15). She was not asking Prof Mok to talk to Mr Ip or to do something to improve the situation (day 18 p.64 line 21 to p.65 line 1). Thus, she was “very, very surprised” and “really, really scared” (day 17 p.141 lines 14-15; p.144 lines 3-4). She was frightened for Mr Ip (day 18, p.27 line 4). Immediately after the phone call, she went to the library to look for articles which Mr Ip had written and which might have provoked Mrs Law’s request (day 17 p.148 lines 16-23). It is unlikely she would have had these reactions or taken these steps if all that Mrs Law had sought was a sympathetic ear.

264. Mrs Law admits that she called Prof Mok not long after she read the article. There are several points in common in their evidence:

264.1. that Mrs Law was angry;

264.2. that Mrs Law referred to a number of articles written by Mr Ip Kin Yuen (Mrs Law’s fourth statement para. 80 [W2/133], day 30 p.137 lines 2-11);

264.3. that the gist of it is that the articles which Ip Kin Yuen wrote were against EMB initiatives (day 17 p.141 lines 7-9;

day 18 p.18 lines 22-25) or at least the impact of such initiatives;

264.4. that Mrs Law said Mr Ip Kin Yuen revealed a private telephone conversation in his article and was upset about this (day 17 p.142 lines 16-19; 18 p.29 lines 7-12);

264.5. that Mrs Law complained that Mr Ip's articles were not based on evidence and were loose talk (day 17, pp.142-143) and that an academic who did not base his comments on evidence could not be seriously considered as an academic;

264.6. that Mrs Law had asked Prof Mok to do something;

264.7. that Prof Mok disassociated herself from the dispute;

264.8. that Prof Mok had suggested that Mrs Law find some space in newspapers to set out her responses.

See Mrs Law's evidence, day 30, p.135 line 1 to p.141 line 18; p.145 lines 7-9.

265. They diverge on the following:

265.1. whether the word “炒” was used;

265.2. whether Mrs Law said “at least he cannot be promoted”;

265.3. whether Mrs Law, in response to the suggestion that she should find newspaper space, had said that it had all been taken up;

265.4. whether Mrs Law asked who Mr Ip’s superior was;

265.5. whether Mrs Law said that she thought Mr Ip was a professor.

See Mrs Law’s evidence, day 30, p.143 line 2 to p.148 line 20.

266. There is, unfortunately, little or no room for a mistake or misunderstanding. Mrs Law admitted as much (day 30 p.151 line 5 to p.152 line 6). The task of the Commission is to determine who is telling the truth.

267. Prof Mok came to give evidence to this Commission with commendable courage and in the discharge of her civic duty. Her evidence is clear and cogent. She was unshaken in cross-examination.

268. In the light of Mrs Law’s allegation that Prof Mok fabricated this evidence against her, it is highly significant that long before the establishment of this Commission, Prof Mok told Dr Grace Mak

about the incident (day 17 p.151 line 22) and Dr Grace Mak corroborates Prof Mok's evidence (statement [W1/38]; chief day 18 p.220 line 22). She was told:

*“Fanny asked me or told me to dismiss or fire Ip Kin Yuen.”*

269. There is nothing to suggest why Prof Mok would have fabricated any evidence against Mrs Law. Nor is there any evidence, or even a suggestion that Dr Grace Mak conspired with Prof Mok to fabricate a case. There would have to be a conspiracy to pervert the course of justice and there is not an iota of evidence to suggest that. When coming to a finding as to who to believe, this Commission is obliged to take into account this factor: see Nina Kung v. Wong Din Shin (2005) 8 HKCFAR 387 paras. 181-187, 188, 189, 266, -268-269, 285, 303, 362, 367, 369, 386, 389, 421, 439-440, 467, 489, 491, 495, 496, 618, 624, 626, 636.
270. Conversely, Mrs Law's evidence as to this telephone conversation is unsatisfactory. Her case in chief is already contradictory. It is plain from her evidence and also from the questions put on her behalf (to Prof Mok and to Dr Mak) that at that stage she did not deny the possibility that she could have uttered the word fire/dismiss (“炒”) (see xx of Prof Mok, day 18 p.60 lines 6-16; Dr Mak, day 19 p.223 lines 19-25; Mrs Law chief day 29 p.139 lines 6-9). This is inherently inconsistent with her position that she did not utter the words to the effect that “at least he could not be

promoted” (day 29 p.149 lines 11-16). Furthermore, in her evidence in chief, Mrs Law sought to give the impression that she only mentioned one article written by Mr Ip: see day 29 p.140 lines 3-8, lines 19-21. But it is clear from other parts of her evidence (day 29 p.142 line 20 to p.143 line 3; fourth statement para. 80 [W2/133]) that she did take issue with other articles written by Mr Ip.

271. In cross-examination, she changed her case from one of not being able to remember and of accepting that she might have said “炒” out of anger or frustration (day 30, p.5 line 11 to p.6 line 10), to a positive assertion that Prof Mok was fabricating evidence against her at the point when it was put to her that if she could not recall whether she had said “炒”, then this was inconsistent with her recollection that she had said that Mr Ip at least should not be promoted (day 30, p.146 line 21 to p.147 line 3). Her evidence is based largely on argument than recollection. Such arguments as advanced by her or on her behalf are, however, flawed:

271.1. She advanced the argument that she could not have asked Prof Mok who was Ip Kin Yuen’s supervisor, because, so she asserts, she would have known that Lee Wing On was Ip’s supervisor. This is hardly convincing. The evidence is that there were a lot of changes as regards the head of that department: Ip Kin Yuen, day 20 p.2 line 17; Prof Magdalena Mok’s fourth statement [W2/309].

271.2. She advanced the argument that she would have known that dismissal of someone in the HKIEd would involve a procedure of dismissal similar to that for a civil servant. This argument assumes that she was rational when making the demand, an assumption which is suspect in the circumstances. There is also no reason to assume that Mrs Law would have thought that the procedure for dismissal in the HKIEd would necessary be similar to that in the civil service.

271.3. Both arguments also presuppose that she would have thought carefully about her words before uttering them. However, as the incident over her remarks in January 2006 over two teachers who committed suicide (to the effect that if the education reforms were linked to their suicide, why would only two have committed suicide: see [N3/79-1]) showed, and indeed as Mrs Law agreed, sometimes when she said things, she might not have thought through the implications (day 30, p.174 lines 12-17).

272. In her witness statement (fourth statement para. 83, [W2/134]) Mrs Law did not specify what it was that she asked Prof Mok to do. During cross-examination, she suggested that she asked Prof Mok whether she could do something about the situation and convince Mr Ip that he should use his columns more positively (day 30 p.152

line 7 to p.153 line 18). At any rate, she did not call up Prof Mok subsequently to find out whether she had talked to Mr Ip (day 30 p.153 lines 19-22). If Mrs Law's version is correct and the purpose of the call was to ask Prof Mok to talk to Mr Ip, it is rather surprising that there was no follow-up on the part of either Prof Mok or Mrs Law.

273. In assessing Mrs Law's evidence about her telephone conversation with Prof Mok, we would draw the Commission's attention to two further matters:

273.1. As Mrs Law herself said, she is forthright by nature. Prof Mok's evidence that Mrs Law called to issue an order to fire Mr Ip is therefore not at all inconsistent with Mrs Law's nature.

273.2. We would also submit that Mrs Law's overall credibility as a witness is doubtful. Her denial that she has made negative comments about various aspects of the HKIED is difficult to accept in the face of a number of accounts to the contrary from witnesses who have no ostensible reason to be untruthful (Dr Vivian Heung, Prof Lo Mun Ling, Miss Charmaine Wong; we deal with this further below in the section on witnesses' credibility).

274. If the Commission considers that the evidence establishes that Mrs

Law requested Prof Mok to dismiss (or procure the dismissal of) Mr Ip, there is a further factual issue of whether Mrs Law intended that this be carried out, or merely made the request as a form of venting of frustration or anger, without intending that it be carried out. Again, unfortunately, the evidence does not appear to admit of the second alternative. Initially, Mrs Law acknowledged that she could have said “炒” out of anger or frustration (day 30, p.5 line 25 to p.6 line 10), but later she said that it would not have been possible (day 30, p.145 line 24 to p.146 line 10). It is not Mrs Law’s case that she may have made the request without meaning it; it is her case that Prof Mok fabricated the evidence of the request. That being the case, if the Commission accepts Prof Mok’s evidence, there is really no room for a finding that the request was not made in all seriousness, as Prof Mok testified.

275. Whilst the allegation made by Prof Mok strictly falls outside the terms of reference of the Commission, we submit that it would be appropriate for the Commission to make findings of fact on this issue, namely (a) whether Mrs Law called Prof Mok to request the dismissal of Mr Ip Kin Yuen and (b) if yes, whether Mrs Law made this request in seriousness, intending that it be carried out, or merely wished to vent her frustration and anger, without intending that the request be carried out. In substance, this allegation is closely related to the terms of the Second Allegation, which essentially tasks the Commission with inquiring into whether senior Government officials sought the dismissal of members of

the Institute consequent upon their publication of articles which criticized the education reform or education policy of the Government. It is also relevant to the credibility of Mrs Law's evidence in relation to the Second Allegation.

The four particularized allegations under the Second Allegation – general observations

276. It will be submitted that whilst Mrs Law probably did call up Prof Morris on one or more occasions to vent her anger about HKIED staff publishing articles or speaking out in public in a manner perceived by Mrs Law to be undermining EMB policies, the four particularized allegations are not made out. This is not so much because Mrs Law gave credible evidence to rebut them, but because of the unsatisfactory nature of the evidence which was given by Profs Morris and Luk in support of these four instances. It is submitted that they were demonstrably mistaken in relation to the incident involving Dr Lai Kwok Chan in October 2002 and the incident involving Dr Wong Ping Man in November 2004. Yet Profs Morris and Luk persisted in their allegations that requests were made by Mrs Law to dismiss these two staff as set out in the further and better particulars (although ultimately Prof Morris conceded that he might have been mistaken with regard to Dr Wong), and indeed efforts were made to “patch up” the evidence in relation to the incident involving Dr Lai.

277. It is submitted that it is likely that the incidents arose out of a misunderstanding between Prof Morris and Mrs Law. Upon being questioned by the Chairman, Mrs Law acknowledged that:

277.1. she did talk to Prof Morris on a number of occasions to express her concern about articles critical of Government education reforms (see also para. 26 of Mrs Law's first statement [W1/155] "It was against this background that occasionally I called the President of the HKIED and other academic staff to discuss current issues and to appeal to them and their colleagues to make more positive use of their newspaper columns and help teachers cope with problems commonly encountered in their work. I wished we could work together to counter the negative image of teachers, or education overall, so as not to deter young people from joining the teaching profession");

277.2. in the course of such discussions, she might have cited specific examples (of articles or authors), although without targeting an article and identifying her disagreement with specific parts of it;

277.3. on one occasion, she might have expressed the hope to Prof Morris that he would do something about the article or author, during the "very early days". His response was that there was actually very little that he could do;

277.4. on that particular occasion, Prof Morris might have told Mrs Law that she should contact the author directly, or write an article in response. Mr Ip was the only one which Mrs Law approached directly as he was the only one she knew well.

See Mrs Law's evidence, day 31, p.96 line 19 to p.109 line 9.

278. The following evidence is also relevant.

278.1. Prof Morris acknowledged that Mrs Law did not expressly ask him to fire members of the HKIEd, save on one occasion (day 10, p.62 line 25 to p.63 line 14). Had she done so, he would have remembered this (day 10, p.92, lines 19-22).

278.2. He also acknowledged that he was not aware of any follow up action taken by Mrs Law to procure the dismissal of the staff members concerned (day 10 p.133 lines 15-18).

278.3. Whilst Prof Morris thought that he would have confided in Dr Simon Ip about these incidents (day 10 p.81 lines 12-16), particularly the October 2002 incident (day 10 p.83 line 5), Dr Ip had no recollection of being briefed about them (day 16, p.80 lines 4-13). He would have expected to have been

so briefed (day 16, p.120 lines 22-25).

278.4. Ms Katherine Ma did not recall taking any notes in relation to matters under the Second Allegation (day 18 p.128 p.14-17); she subsequently confirmed that she had not located any [W2/52-1]. This provides some indication as to how seriously the calls were treated by Prof Morris and his confidantes at the time (cf. para. 42 of Ms Ma's second statement [W1/287] where she said in relation to the issue of the linkage between merger and reappointment that she "sensed that the issue would linger on" so that she jotted down notes for reference).

278.5. Prof Morris' memory as to the dates on which various events is not strong. It is therefore possible that he could have transposed events from one date to another, and transposed conversations which took place one date to another date.

278.6. Mrs Law was a forthright person. She had expressed views to both Mr Ip and Prof Mok along the lines that if an academic wrote articles without evidence, he did not deserve to be an academic. Prof Morris, for his part, was sensitive to negativity on the part of the EMB and Mrs Law to the HKIEd. There was therefore every possibility that such comments by Mrs Law would be interpreted by Prof

Morris as an implicit request to dismiss the staff members concerned.

279. Whilst Prof Morris' evidence on the four incidents is, in our submission, unreliable, this is not to say that he did not genuinely believe that he had been encouraged to dismiss certain staff members. As early as 19 September 2003, he had written an email to Dr Leung [MLA1/206] commenting that Mrs Law "has often asked me about the contribution of certain colleagues and encouraging 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 of government's policy." It may, however, be said that the tone and terms of the email indicate that, at least at that point in time, he did not consider that Mrs Law had made requests (express or implied) as such; but rather, she had merely provided a more nebulous form of "encouragement".

280. A final point which we would make before turning to the four specific instances is that the Second Allegation as framed in the intranet letter contained an element of interpretation on the part of Prof Luk. Prof Morris pointed out that he did not make the Second Allegation (day 6 p.52 line 6). Furthermore, the allegation as framed in Prof Luk's letter is demonstrably inaccurate even if the allegations as set out in the further and better particulars are accepted in full, because (a) apart from one occasion, it is not said

that Mrs Law expressly requested the dismissal of staff, and (b) apart from one occasion, the requests for dismissal were not said to have followed on from any articles published in the media. Prof Luk did not accept that his letter was not accurate; he described it as non-exhaustive; it would only be inaccurate “if there never had been any telephone calls and none of the telephone calls or contacts have ever related to any published articles” (day 14, p.32 line 6 to p.33 line 11). This reveals a rather defensive attitude regarding the contents of the intranet letter, and it is submitted that Prof Luk’s evidence has to be assessed in light of this.

*30 October 2002 allegation: dismissal of Mr Ip Kin Yuen and Dr Lai Kwok Chan*

281. The event which is at the centre of this incident was a seminar on small class teaching held at the HKIED. It was jointly organized by the Subsidized Primary School Council, the HK Primary Education Research Association and the HKIED [MLA1/171]. The Hon Mr Cheung Man Kwong was one of the invited speakers. Mr Ip Kin Yuen also attended as one of the speakers. The seminar was chaired by Prof Cheng Yin Cheung [MLA1/171]. A report of the event appears on the 30 October 2002 issue of the Sing Tao Daily at [MLA1/170].

282. The allegation is that on 30 October 2002, Prof Morris received an “irate phone call” from Mrs Law in which she expressed anger

about a seminar on small class teaching held on 29 October 2002. She complained about the use of public funds to organize the event, the invitation of PTU and the provision of a forum for it and Mr Cheung Man Kwong to present their views; she then went on to question why the HKIEd employed Mr Ip Kin Yuen and Dr Lai Kwok Chan, and told Prof Morris that he should sack them. This was the only occasion on which the word “fire”, “sack” or “dismiss” was used (day 10, p.6 line 25 to p.63 line 14).

283. This is the conversation in which, according to Prof Morris, he told Mrs Law that if she did not like Mr Ip’s and Dr Lai’s views, she should contact them directly (day 5, p.102 lines 13-18); whilst Mrs Law accepts that there was an occasion on which Prof Morris suggested that she get in touch with the authors of critical articles directly, she denies that this was the conversation concerned, as that conversation took place “in the very early days” and had nothing to do with small class teaching or specific topics, but was merely a general discussion (day 31, p.108 line 16 to p.109 line 8); furthermore, during the conversation of 30 October 2002, she says that she did not even know of Mr Ip’s involvement (day 29, p.54 line 4 to p.55 line 5).

284. Prof Morris thought that “it was clear from the conversation that she was phoning up in response to the article” (day 6, p.66 lines 20-21). The article is the Sing Tao article of 30 October 2003 [MLA1/170]. It reports Mr Cheung Man Kwong’s call to the

education community to use the golden opportunity of declining student numbers to implement small class teaching. It did not, however, refer to either Mr Ip or Dr Lai.

285. Much time was spent in cross examination on whether the article should be described as critical of the Government, or whether small class teaching was contrary to Government policy at the time. However, this is irrelevant in light of the fact that Mrs Law confirmed that she was unhappy because the PTU had been invited and the seminar had been used by the PTU to promote its political agenda (day 30, p.156 line 17 to p.157 line 4). It should also be noted that the article was not written by any member of the Institute, and therefore would not fall within the description in Prof Luk's intranet letter of the occasions when a request was made to Prof Morris for the dismissal of staff following on from publication of articles by HKIEd members to criticize Government education policy or education reform [CB/14 & 15-14].

286. Dealing first with Dr Lai: he in fact had no involvement in the seminar, other than as an interested observer. He had also arranged for someone else to hand out leaflets, advertising an upcoming seminar in November 2002, but this was not apparent from the Sing Tao report, and Prof Morris himself did not know this until he asked Prof Luk in the course of his (Prof Morris') evidence (day 10, p.99 line 21 to p.100 line 21). See also the evidence of Mr Ip, day 20 p.16 line 22 to p.17 line 22, and Dr Lai, day 19 p.2 line 19 to p.3

line 12). There would have been little, if any, indication to the outside world that Dr Lai had any role in the seminar.

287. Another event that had happened at around that time, however, was a press conference in the afternoon of 30 October 2002 at the HKIEd, where Dr Lai was the principal speaker. Severe criticisms were made of the EMB's failure to implement the "all graduate all trained" policy. See the newspaper reports on 31 October 2002 at [MLA1/178-186].

288. It seems probable that Prof Morris mis-identified Dr Lai as being the subject of a dismissal request arising from the 29 October seminar by reason of his involvement in the press conference on 30 October 2002 relating to the "all graduate, all trained" policy.

288.1. One of the documents produced by Prof Morris was his email of 19 September 2003 to Dr Leung [MLA1/206], in which he wrote about the 29 October 2002 seminar and the 30 October 2002 press conference together in one sentence: "Also last October, she got very agitated and contacted us to complain when we made public comments about the non-implementation of the all graduate all trained teachers policy and organised a seminar to discuss small class teaching". Prof Morris may have confused the two matters when putting together the further and better particulars of the Second Allegation some 4½ years later, in March 2007.

As he explained, he pinpointed the date of the telephone call by reference to the correspondence (day 6, p.10 lines 5-17).

288.2. It is also noteworthy that in that email, he did not mention that Mrs Law had asked him to dismiss Dr Lai (or Mr Ip, for that matter) even though he raised both the issue of encouragement to get rid of staff and Mrs Law's dissatisfaction with the small class teaching seminar.

288.3. Mrs Law did express dissatisfaction with Dr Lai in October 2002, but that was because of his press conference on the "all graduate, all trained" policy; she expressed the dissatisfaction by way of a letter on 31 October 2002 [MLA1/187].

288.4. In Prof Morris's reply of 4 November 2002, he responded to Mrs Law's complaints about both the seminar and the press conference [MLA1/189].

288.5. Again, it is noteworthy that in this letter, he did not complain about or even refer to Mrs Law's request to dismiss Dr Lai or Mr Ip, even though there was an express reference to the telephone conversation in the following terms:

*"With regard to the telephone conversation on 30 October.*

*You contacted me to enquire why we had organized a seminar at the HKIEd on Small Class Teaching and you queried the personnel who had been invited. Your concern was that the participants had expressed views contrary to government policy and these had been reported in the media. Consequently the circumstances were not conducive to discuss the press briefing which took place later that day. I wish to point out that this seminar and the aforesaid press briefing are examples of activities that we initiate which are designed to encourage/generate public debate amongst the education community and expected of any tertiary institutions. Such discussions are a hallmark of a professional teaching force...”*

288.6. The letter also showed that Prof Morris was not afraid to defend the holding of the seminar or the press conference. Similarly, in his earlier letter of 14 May 2002 [MLA1/165], he had not been afraid to speak his mind regarding Mrs Law’s interview with the SCMP.

288.7. Furthermore, Dr Simon Ip testified that he had approved the draft of the letter (day 16 p.76 line 22 to p.77 line 6). Dr Ip’s evidence was that he had no recollection of any briefing which touched on Mr Ip or the telephone conversation of 30 October 2002, and that if he had been told about it, it would certainly have registered in his mind and he would have taken some action: day 16 p.79 line 15 to p.82 line 5.

288.8. It is therefore highly unlikely that had Mrs Law made a

request for the dismissal of Mr Ip and Dr Lai, this would not have been the subject of complaint in the letter of 4 November 2002.

288.9. At the time of the seminar, there was nothing in the public domain to suggest that Dr Lai was an advocate of small class teaching. Mr Ip Kin Yuen could not recall any article which Dr Lai had published before the seminar (day 20, p.18 lines 1-6).

289. Despite the fact that Dr Lai was not mentioned in the Sing Tao report and was not an organizer of the small class teaching seminar, Prof Morris maintained that Mrs Law had asked for him to be fired (day 10, p.103 lines 5-12).

290. Prof Luk sought to bolster the complaint about the request to dismiss Dr Lai by saying that he understood him to have been a “full collaborator” with Mr Ip on small class teaching “right from the beginning, somewhere in the middle of 2002” and that they co-organised the October 2002 conference (day 14, p.40 line 9 to p.41 line 3). Dr Lai confirmed that this was not the case; he attended the seminar for about 20 minutes before going to another meeting; he did not speak at the seminar; the pamphlets prepared by him were distributed by someone else; and a third party observer would not have considered him as even taking part (day 19, p.2 line 19 to p.6 line 20). Whilst Prof Luk says that he got his

understanding that Dr Lai was a full collaborator from September 2003 when he was given a book co-edited by Dr Lai and Mr Ip (day 15 p.14 line 23 to p.15 line 18), and from re-reading the preface to the book prior to giving evidence (day 14, p.39 lines 13-19), it is difficult to understand this evidence, given that the preface makes no reference to Dr Lai being involved in the October 2002 seminar [MLB/265 at 267], and more importantly, given that before giving evidence, he had asked Dr Lai about his involvement in the October 2002 conference, specifically for the purposes of this Inquiry (day 14, p.42 lines 12-24) (“I...asked him to tell me exactly what went on”). It is also difficult to understand why, if this had been his understanding, he did not tell Prof Morris this at the same time that he told him that Dr Lai had distributed pamphlets (day 14, p.42 lines 23-25). His answer to this point is unsatisfactory: that he thought that there was no dispute that Dr Lai was a collaborator (day 15, p.21 line 3 to p.23 line 6). He subsequently suggested that he had perhaps after all told Prof Morris (day 15, p.27 lines 3-19).

291. As for Mr Ip: the evidence shows that Mrs Law was unhappy about the fact that Mr Cheung Man Kwong and the PTU had been invited, and this was a complaint she made to both Prof Morris in the telephone conversation of 30 October 2002, and also to Mr Ip Kin Yuen, in a separate telephone conversation. Mr Ip recalled that it took place about a day after the 29 October seminar, as he prepared a summary dated 31 October as a result of their conversation

[W2/226] (day 20, p.8 line 20 to p.10 line 16). His evidence was that Mrs Law was questioning him as to why Mr Cheung Man Kwong had been invited to the small class teaching seminar, and that Mrs Law asked him to hand over the videotape of the seminar to allow her to have a clear picture of the seminar, but he declined. In other words she would have learnt of his identity even before receiving the materials sent by Prof Morris on 4 November 2002 [MLA1/189]. Mrs Law does not recall the conversation or that she had asked for the videotape (day 29 p.46 line 18 to p.47 line 3; day 30 p.3 lines 11-15). The question is therefore whether Mrs Law knew of Mr Ip's involvement in the seminar by the time of her telephone call to Prof Morris, and if so, whether she requested that he be dismissed during that conversation.

292. Prof Morris thought that Mrs Law knew of Mr Ip's involvement by the time of the telephone conversation. However, as in the case of Dr Lai, the various bases advanced for this do not appear sound. On the other hand, the fact that he could not advance sound reasons for her knowledge does not necessarily mean that Mrs Law did not know. More importantly, Mrs Law appears to have known about Mr Ip's involvement before Prof Morris sent the materials to her on 4 November 2002, because she was able to ring up Mr Ip about the seminar on 30 October 2002. It is therefore possible that Mrs Law learnt about Mr Ip's involvement from some source not mentioned by Prof Morris or that she learnt of this during the telephone conversation with Prof Morris. (Whilst a number of documents

have subsequently been produced to show that notice of the seminar and its organisers were provided to the EMB beforehand [MLA3/66-70], we would point out that there is nothing to suggest that these were brought to the attention of Mrs Law.)

293. However, as to whether Mrs Law asked for Mr Ip to be fired on 30 October 2002, it is submitted that this could not be established on a balance of probabilities, given that:

293.1. Mrs Law and Mr Ip were on friendly terms at the relevant time: see personal emails exchanged between July 2002 and September 2002 [EMB11/15 to 21-2]. He requested that she write a foreword for his upcoming book, which she provided on 2 October 2002 [W1/37-4]. There was a further email exchange on 4 November 2002, in relation to an upcoming visit by Shanghai educators; this was more formal in tone [EMB11/21-1]. Mr Ip himself considered that there was no deterioration in their relationship until December 2003, when he published his article “推卸責任?”;

293.2. whilst Mrs Law did call up Mr Ip to question why Mr Cheung Man Kwong had been invited, it seems that Mr Ip did not himself think that this had a particularly negative impact on their relationship, as it was just a case of two people holding different views (day 20, p.7 line 1 to p.8 line 9; p.10 lines 17-22);

293.3. the evidence from Profs Morris and Luk in relation to the telephone call of 30 October 2002 is generally not satisfactory and the contemporaneous documents (4 November 2002 letter to Mrs Law and 19 September 2003 email to Dr Leung) are not consistent with a request for dismissal having been made during the telephone conversation.

*(19) November 2004 allegation: dismissal of Dr Wong Ping Man*

294. The allegation is that at the graduation ceremony of the HKIEd in November 2004, Mrs Law drew Prof Morris to one side and had a very short conversation with him in which she said “Who is this guy, Wong Ping Man? What is he doing working for you? Why do you employ him?”, and he did not have a chance to respond because somebody else came to say hello. He thought this was an implicit request to dismiss Dr Wong (day 5, p.103 lines 2-20).

295. It is not said that Dr Wong had written any articles (or engaged in conferences or seminars) which resulted in a request that he be dismissed (day 6, p.50 line 19 to p.51 line 3). Supplied as part of the further and better particulars were two articles written by Dr Wong. Only one of these was dated prior to 19 November 2004. It is dated 5 May 2004 [CB/146]. It addresses the professional development of teachers. It did not contain any criticism of the

Government or education reform. Prof Morris agreed, see day 6 p.55 lines 7-10. He also agreed that EMB agreed with the views expressed by Dr Wong (day 6, p.59 lines 5-16).

296. When pressed as to whether he wished to withdraw the allegation in relation to Dr Wong, Prof Morris pointed out that he did not make the Second Allegation (day 6 p.52 line 6). Whilst he initially stood by his allegation (day 6, p.59 line 17 to p.60 line 3), he did subsequently accept that he might have misinterpreted Mrs Law's comments (day 10, p.130 lines 16-18).

297. Prof Luk's evidence on this incident was rather vague. He said he may not have asked for details (day 12 p.150 line 19 to p.151 line 12), and he could not recall the details of his discussion he had with Prof Morris on this (day 15 p.36 lines 8-14).

298. Both Prof Morris and Prof Luk had been puzzled at the request and yet they did not try to find out more about why he had been the subject of Mrs Law's request (Prof Luk, day 15, p.112 line 18 to p.113 line 10). This suggests that at the time, whatever Mrs Law had said did not really cause Prof Morris or Prof Luk great concern.

299. Mrs Law testified that she did not have personal dealings with Dr Wong and could not recall who he was, that the views he expressed were consistent with EMB's principles, and that she had no reason

to speak about Dr Wong in a negative tone on the occasion of the 2004 graduation ceremony (day 29, p.3 line 21 to p.12 line 4)

300. It is submitted that there is insufficient evidence to establish the allegation that Mrs Law wished to dismiss Dr Wong Ping Man.

*November 2004 allegation: dismissal of Prof Cheng Yin Cheong*

301. The allegation is that Prof Cheng Yin Cheong published a series of articles in November and December 2004 which were very critical of the ongoing education reforms, in the midst of which Mrs Law called Prof Morris, launched into a tirade about their contents, expressed extreme anger about the damage which they were doing to education reforms, and said that the HKIEd should not be employing him: Prof Morris, day 5, p.104 line 3 to p.105 line 24.
302. This is the only one of the four particularized incidents for which Prof Morris could supply a link between articles published by the member of staff concerned and the request by Mrs Law.
303. According to Prof Morris, prior to this incident, officials in the EMB were already unhappy with Prof Cheng, because he had organized the school principals' conference of March 2004 at which criticisms of the EMB and education reforms were voiced. Prof Cheng had also made a speech which was critical of the education reforms. The conference was reported on the following

day as being a HKIEd conference which condemned the EMB and the education reforms (day 12, p.45 line 10 to p.46 line 11). Prof Grossman also recalled that the most intense discussion of calls made by Mrs Law centred around the school principals' conference and Prof Cheng (day 17, p.24 line 10 to p.25 line 10). Mrs Law denied having drawn up any list of punishments, and instead claimed that a list of actions was drawn up to address the concerns raised during the conference [EMB14/1241]. Clearly the EMB was concerned by the sentiments at the conference and apparently taken aback at what was an "unexpected" reaction (Mrs Law, day 29, p.89 lines 7-25).

304. A recurring theme of Prof Cheng's articles in November and December 2004 was that the education reform imposed very heavy burdens on teachers. They discussed matters such as the excessive workload and pressure on teachers, their low morale, and their suicidal thoughts (see eg. "教師已陷入危機" [EMB12/568-10]).

305. Mrs Law's case was, firstly, that his views were put forward in the course of a consultation on 3-3-4 and curriculum reforms. As Prof Morris pointed out, however (day 7 p.147 lines 3-11), this did not mean that the views were welcome. Mrs Law herself accepted that she did not want negative images to be given of the teaching profession. At a meeting of 16 June 2005 with TEI representatives [MLB/152 at 155], Mrs Law is recorded by the TEIs' minutes as having said "...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 demoralized; 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, and at the same time give the business community a bad impression of teachers because businessmen do not see teachers as more overworked than their employees". Mrs Law accepted that this was what she said, stating "I do accept this is a recurrent theme, that I appealed to all the stakeholders to work together and to project a positive image of the teaching profession, yes." (day 30, p.165 lines 21-23).

306. This description of comments made by teacher educators describes precisely those made by Prof Cheng. If Mrs Law wanted such comments to be stopped, there is no reason why she would have made an exception for Prof Cheng. Nor is there any logical reason why her view would have been suspended during the period of consultation about the 3-3-4 and curriculum reforms. The articles containing Prof Cheng's negative comments were not submitted privately to the EMB; they had earlier been published in Ming Pao: see [EMB12/568-1 at 568-6].

307. The second aspect of Mrs Law's case in relation to Prof Cheng was that a number of his recommendations were adopted by the EMB

(see cross examination of Prof Morris on day 7, p.149 line 4 to p.153 line 25). However, the fact that he made recommendations which were adopted by the EMB is not inconsistent with Mrs Law being unhappy over his negative comments about the effect which the education reform was having on teachers.

308. It is submitted that on the evidence, and notwithstanding Mrs Law's denial, it seems quite likely that Mrs Law was unhappy at the series of articles published by Prof Cheng in Ming Pao complaining about the fallout from the education reforms. However, did she go on to ask Prof Morris to dismiss Prof Cheng?

309. On this question, we would draw the Commission's attention to the differences in the evidence of Prof Morris and Prof Luk, as pointed out on behalf of Mrs Law. Whilst Prof Morris testified that Mrs Law had made specific reference to Prof Cheng's articles and their contents (day 5, p.105 lines 5-12), Prof Luk had testified that (as told to him by Prof Morris), Mrs Law had not made specific reference to the articles and instead had made a general criticism that Prof Cheng published opinions rather than scholarly pieces, and they inferred that, since this criticism came at a time when Prof Cheng was publishing a series of articles, she was probably referring to these articles (day 15, p.33 line 24 to p.35 line 18). In fact, Prof Luk had been rather vague about this allegation in evidence in chief, and did not testify to any telephone call from Mrs Law regarding Prof Cheng: see day 12, p.64 line 4 to p.67 line

24.

310. We would also point out that this incident was one where Prof Morris inferred that Mrs Law had asked for Prof Cheng's dismissal, rather than one where Mrs Law had made an express request. In the circumstances, and given Prof Morris' sensitivity to criticism of the HKIED, it is submitted that it could not be concluded on a balance of probabilities that Mrs Law had asked for Prof Cheng to be dismissed. Nevertheless, it is likely that Mrs Law did make a call to Prof Morris and said something along the lines of her "recurrent theme", or even vented her anger towards the expressions of views by Prof Cheng.

*21 April 2005 allegation: dismissal of Prof Cheng Yin Cheong and Mr Ip Kin Yuen*

311. The allegation in relation to the fourth particularized incident is that on 21 April 2005, 3 days after the deadline for the Voluntary Departure Scheme ("the VDS") had passed, Mrs Law telephoned Prof Morris, to ask whether Mr Ip Kin Yuen and Prof Cheng Yin Cheong had been included in the scheme; she had given a long exposition of her views on the deficiencies of Mr Ip's research, the fact that he did not have a PhD, published opinions, did not base his work on evidence; she had been upset at Prof Cheng's constant publication of negative and critical comments on the education reforms; and she had said that both should be in the scheme. Prof

Morris gave her his usual response but also explained to her that he did not think either staff were eligible for the scheme – Prof Cheng because he was too close to retirement age, and Mr Ip because he was on contract terms (day 5, p.109 line 23 to p.110 line 23; p.111 lines 7-9).

312. Prof Morris and Prof Luk have not identified any particular action on the part of Mr Ip or Prof Cheng which may have led to Mrs Law's request to put their names on the retirement schemes. However, this in itself is inconclusive. On the evidence analysed above, Mr Ip and Prof Cheng were two members of the Institute who had previously published articles which upset Mrs Law. Had she been minded to seek their removal, the VDS/CRS (compulsory retirement scheme) of April 2005 may have presented itself as a good opportunity.

313. It was put to Prof Morris that it was implausible for Mrs Law to have asked for Mr Ip and Prof Cheng to be put onto the VDS, because the scheme was voluntary in nature and so they would have had to volunteer their names for the scheme. Furthermore, Mrs Law had been asked to approve the CRS [EMB12/466] and in the course of this was presented with documents which indicated that the VRS was designed for HKIEd staff on superannuation terms; Mrs Law said that she knew Mr Ip was contract staff from his secondment to the EMB when she had occasion to review the terms of his employment [EMB12/222] (day 29, p.58 line 14 to

p.64 line 11). (Equally, Prof Cheng and Mr Ip could not have been put onto the compulsory retirement scheme, because they were not ex-civil servants, and no doubt Mrs Law would have had the means to ascertain this had she wished to do so.)

314. It is submitted that there is some force in this point. It is not suggested that Mrs Law telephoned Prof Morris in a fit of rage, as she did with Prof Mok.
315. On the other hand, this would be insufficient to rule out the possibility that Mrs Law was trying to persuade Prof Morris to encourage Mr Ip and Prof Cheng to join the scheme – but for the fact that the deadline had already passed at that point in time. However, Prof Luk’s evidence was that the list of staff under the schemes was not to be finalized until 27 April 2005, at a committee meeting (day 12, p.50 lines 12-25). Presumably, Mr Ip’s and Prof Cheng’s names could still have been added. On the other hand, it seems unlikely that Mrs Law would have sought to persuade Prof Morris only at such a late stage.
316. Mrs Law has put forward a plausible reason for making the telephone call to Prof Morris, that is, to ascertain how many people were on the VDS as this would have an impact on how many staff would have to be compulsorily retired under the CRS, which in turn would have financial implications for the Government as staff departing under the CRS would be ex-civil servants and entitled to

Government pensions. The more staff who sought to leave under the VDS, the less would have to be compulsorily retired in order to achieve the HKIEd's savings target. She apparently also wanted to find out the number who would be compulsorily retired as she was concerned that there might be a backlash similar to that experienced in the 2001/02 Management-Initiated Retirement Scheme (day 29, p.64 line 12 to p.66 line 1). On the day of the telephone call, she had written an email to ask how many people had been put on the VDS; she had received no information; hence she had to call Prof Morris [EMB12/530] (day 29, p.71 lines 1-24). However, the email appears to have been sent at 8.08pm, so if Mrs Law called Prof Morris on that day and during office hours, this email would not be an explanation for the call.

317. It is submitted that given that it is common ground that the telephone conversation occurred after the deadline for HKIEd staff to apply for the VDS, and that there was a reason for Mrs Law to make the telephone call after the deadline which had nothing to do with wanting to put certain staff onto the VDS list, it is unlikely that Mrs Law telephoned Prof Morris to seek to have Prof Cheng's and Mr Ip's names put onto the list.

*Enticing staff to leave*

318. In the course of this Inquiry, the Commission has heard evidence that Mrs Law encouraged certain members of the HKIEd to leave

for greener pastures elsewhere. We submit that these incidents do not assist in the determination of whether Mrs Law asked for other members to be dismissed. The fact that she may have held certain members of the HKIEd in high regard, or viewed the HKIEd as an institution with disdain, has no probative value as regards whether she wished for certain staff to be dismissed. The incidents do, however, shed light on the allegation of her negativity towards the HKIEd, and the credibility of her evidence generally. We deal further with this when we address the issue of credibility of the witnesses.

## **Section 7: The Third Allegation**

319. Prof Luk gave evidence of a telephone conversation between him and Prof Li which is the subject of the Third Allegation. There is no dispute that a telephone conversation took place between Prof Luk and Prof Li on 29 June 2004. There is also no dispute as to the background relevant to that conversation. We have referred to this in our Opening Submissions: see paragraphs 7.41 to 7.48. For the sake of convenience we repeat them below with only minor modifications.
320. Due mainly to a decrease in the number of students enrolled, some primary schools experienced reduction of classes, resulting in some teachers being made redundant. Up to about 2002, schools adopted a “last in, first out” (“LIFO”) arrangement as recommended by the ED in the 1970s at the request of the PTU. Under this arrangement, when there was a need to make teachers redundant, temporary teachers were made redundant first, followed by permanent teachers according to their length of service in the school. Thus of the permanent teachers, the one with the shortest length of service (i.e. “last in”) would have been the first to be made redundant. The ED required schools to adopt the LIFO arrangement unless there were very special reasons in support.
321. In October 2002, the Director of Audit criticized the LIFO arrangement to be at variance with good human resource

management practices; and to carry the risk of alienating good teachers and rewarding mediocrity: see [EMB7/3 at 5] para. 4.7.

322. As a result and after consultations in early 2003, the EMB introduced an arrangement called “Priority Appointment Period” (“PAP”) under which all teaching vacancies were to be frozen for a period from February until early July each year to enable redundant teachers to be redeployed: see the EMB Circulars No. 45/2003 [EMB7/17].

323. In 2003, the PAP was extended until 8 August 2003 [E2/108].

324. There were a number of complaints about the PAP: see letters of 12 March 2003 [EMB7/14] and 16 July 2003 [EMB7/72]. These were addressed to Prof Li and gave the contact address of the complainants as one of the HKIEd student hostels. There was a further stern statement from a group of concerned teachers on 20 July 2003, seeking the end of the PAP [EMB7/73].

325. In October 2003, the Ombudsman, pursuant to a complaint made by teacher-graduates who were disadvantaged by the introduction of the PAP, conducted an investigation into the arrangement: see [EMB7/96; 214]. In view of the Ombudsman’s investigation being in progress, the EMB set the PAP to end on 30 June 2004: EMB Circular Memorandum 318/2003: [EMB7/215 at 218].

326. In February 2004, approval was sought from LegCo to establish an “Early Retirement Scheme” for aided primary school teachers, for 3 years from 2004 to 2006 initially, to provide an incentive in the form of ex-gratia payment for some teachers of aided primary school to retire early so as to ease the problem of surplus teachers and make more teaching posts available in the market.
327. In May 2004, the Ombudsman published its findings and report which criticized the PAP arrangement as imposing restrictions on schools in their employment of teachers, contrary to the spirit of school-based management, and commented that the EMB had paid little attention to the interests of the HKIEd fresh graduates in the 2003 priority arrangements: [EMB7/283 at 286].
328. On 20 May 2004, the EMB issued a press release welcoming the Ombudsman’s recommendations on surplus teacher arrangements: [EMB7/290]. On 21 May 2004, the HKIEd also issued a press release welcoming the Ombudsman’s report: [EMB7/292].
329. In June 2004, the PTU organized protests and hunger strikes in support of the surplus teachers: [EMB7/299 to 301]. The sit-in took place on Saturday, 26 June 2004 [EMB7/301].
330. On Monday, 28 June 2004, Prof Li attended a meeting with the representatives of the PTU in which both sides set out their positions: [EMB7/304]. No agreement was reached. The Hon Mr

Cheung Man Kwong described the negotiations on 28 June 2004 as having broken down (para. 1, second statement, [W2/292]). The PTU requested that the PAP should only end when the number of surplus teachers was reduced to 70. Prof Li's position was that unless there was consent from the Ombudsman, the extension of the PAP was not feasible [E2/110]. As a result of the EMB's refusal to extend the PAP, the PTU announced on 29 June 2004 that they intended to escalate their protests by staging a hunger strike on 3 July 2004 [W1/179 para. 5.4(H).] See the press release by the PTU on 29 June 2004 at [EMB7/306 = IE4/111]. The Sing Tao reported that the progress during the meeting on 28 June 2004 had not been as satisfactory as expected and that Mr Cheung Man Kwong had announced that in order to get the authorities to address the problem of surplus teachers, a hunger strike would be held; on the other hand, the EMB spokesman said that the atmosphere of the negotiations had been good and there had been a frank exchange of views, and expressed puzzlement at the proposed hunger strike and a hope that the PTU not to take excessive action [N3/121-2]. Ming Pao also reported the announcement of the hunger strike, and reported the EMB as saying that it had been maintaining contact with the PTU and called on it not to take excessive action [N3/121-1].

331. At this point, Prof Li's position hardened. This is reflected in the record of the meeting of 29 June 2004 with the Chief Executive. Prof Li had reported that subsequent to a discussion with Mr

Cheung Man Kwong, the latter had gone on to announce a hunger strike and in the circumstances, Prof Li had felt that the PAP should not be extended [EMB7/308-1]. "...life should be give and take. If you want to escalate it, then I'm not going to ask the ombudsman" (about the possibility of extending the PAP) (day 34, p.171 lines 2-5). The record of this meeting shows that the matter was far from being resolved and that the PTU was escalating its actions. This is contrary to Prof Li's evidence that the problem had been "resolved" (day 34 p.174 lines 10-11). The unexpected escalation by the PTU would have been ample incentive for a condemnation. If the negotiations had been going well but then suddenly, the PTU had announced a hunger strike, one can well see why Prof Li would have been perplexed and angered. The suggestion that private negotiations had been cordial (day 34, p.169 lines 15-16) might have been true but was irrelevant by 29 June: the situation was not resolving itself, and the issue of the surplus teachers was now a problem which (a) was being escalated in the public arena, and (b) concerned the Chief Executive, and had to be addressed. The hunger strike may have been political shenanigans and it may have been an election year, but this would have been the very sort of political problem which Prof Li had to address. See also the report in Wen Wei Pao of 3 July 2004 [EMB7/314] which reported an EMB spokesman as saying that the hunger strike was unnecessary and should not have been organized; Mr Cheung Man Kwong had agreed to continue negotiations but then suddenly called a hunger strike, attempting to give the erroneous message that the EMB was

giving the surplus teachers no way out, and this was unfair. Whilst this report dates from 3 July 2004, these would have been the EMB's sentiments at the time the PTU announced its hunger strike.

332. It was in that context that Prof Li called Prof Morris, eventually getting through to Prof Luk (day 34, p.172 line 20 to p.173 line 6), (although Prof Luk denied that obtaining a condemnation of the PAP would have been of any use). It is likely that he would have been angry and frustrated at the time and expressed himself forcefully to Prof Luk. Prof Li denies, however, that he was angry at the time (day 34, p.186 lines 10-12).

333. Prof Luk was aware that the PAP was scheduled to end on 30 June 2004, and he was also aware that in the previous year, in 2003, the PAP did not end until the first or second week of August: day 13 p.14 lines 17-21.

334. The telephone conversation in question took place on Tuesday, 29 June 2004, the day before the PAP was to expire. Prof Luk's evidence is that the call was some time in the early evening between 5:30 to 6:00 (day 12 p.18 line 20); Prof Li did not suggest otherwise. Prof Luk took the call as Acting President since Prof Morris was on leave. He said Prof Li did not ask for his name, but only wanted to know whether he was the Acting President. Upon hearing his confirmation that he was, Prof Li then allegedly said to Prof Luk in Chinese in a firm commanding tone: "I want you to

issue a statement to condemn the teachers who are staging a sit-in and the PTU.” Prof Luk said he responded by asking why he had to issue such a statement, to which Prof Li allegedly responded by saying “Because they are stopping your students from getting jobs” (day 12 p.30 lines 7-8). According to Prof Luk, he immediately declined and gave as his reason that both groups of people were the HKIEd students. He claims that Prof Li “shot back very very angrily, “你唔肯出咩嗎，好，I’ll remember this, you will pay”. This was allegedly said in an angry forceful tone, such as to produce a sensation of fear in Prof Luk. After his instinctive response of personal fear, he began to think of the consequences, and became worried as to what the HKIEd might have to pay for his refusal. He tried to placate Prof Li by asking what he could do to help with the impasse, suggesting that he could call up the PTU to see what he could do, whereupon Prof Li gave him his telephone number.

335. Prof Li’s version of the telephone conversation is very different. He denied that he had asked Prof Luk to issue a statement condemning the surplus teachers and the PTU. He maintained that he had a cordial relationship with PTU in private meetings. He said he was only seeking to ask the HKIEd to endorse publicly the termination of the PAP, along the lines of the statement which it had issued to endorse the Ombudsman’s report (day 34, p.63 lines 13-17; p.69 lines 1-6). He said when he spoke to Prof Luk on the telephone on 29 June 2004, he was only indicating his “hope” that the HKIEd would support the cessation of the PAP and continue to endorse the

findings of the Ombudsman. His evidence is that Prof Luk said he would consider the issue and would call him back but did not (day 34, p.65 lines 5-15). He said he did not know Prof Luk well at the time. He denied having threatened Prof Luk, and claimed that he had no reason to do so. He said that there was no reason to condemn the teachers who were staging a sit in, or the PTU, with whom they were negotiating directly; whilst he was aware that they would be staging a hunger strike, this was just part of the political process (day 34, p.66 line 10 to p.67 line 2). Prof Luk said that he would think about it and consult his colleagues, which Prof Li thought was reasonable, so he gave him his telephone number (day 34, p.70 line 25 to p.71 line 8). Prof Luk did not in the end get back to Prof Li, but on the following day, Dr Francis Cheung of the HKIEd issued a statement and Prof Li thought the matter was closed, the statement having been issued in response to his request (day 34, p.69 lines 10-14; p.73 lines 11-13). Regarding Prof Luk's evidence that he offered to talk to the PTU, Prof Li said that there was no need for him to do so since Prof Li was already negotiating with the PTU (day 34, p.70 lines 17-21).

336. On the next day, 30 June 2004, Sing Tao Daily [N3/101-2] quoted Dr Cheung Wing Ming (the former Registrar of the HKIEd) as expressing a view against extending the PAP. At a Senior Management Meeting held that morning, it was recorded that Mr Cheung had been misquoted and that there was "a rumour that IEd has issued a statement opposing the hiring freeze, which has not

happened at all” [IE4/108-109]. The meeting notes went on to record that HKIEd’s stand point was to have a balanced protection for both redundant teachers and new teachers and further recorded that Prof Luk had been involved in bridging communications between EMB and the PTU and had proposed to both sides to consider establishing a retraining fund for redundant teachers to prepare themselves to teach other subjects.

337. There are four issues of fact for the Commission.

337.1. Did Prof Li ask Prof Luk to issue a statement to (a) welcome the end of the PAP or (b) condemn the teachers who were staging a sit-in and the PTU?

337.2. Whatever request Prof Li made, did Prof Luk immediately refuse this request, or did he say that he would consider and revert?

337.3. In response to Prof Luk, did Prof Li say “你唔肯出吓嗎，好，I’ll remember this, you will pay”?

337.4. Did Prof Li exert improper pressure on Prof Luk to comply with his request?

338. We would also point out that in considering whether to make a finding of fact on any of the issues outlined above, it is not merely

a question of preferring the version of one witness to another. Rather, the Commission must consider whether the evidence on a particular issue is sufficiently cogent to satisfy the Re H standard, that is to say, the Commission has to be satisfied on the balance of probabilities that the event occurred, bearing in mind the inherent probability or improbability of such an event.

(1) What request did Prof Li make to Prof Luk?

339. Prof Luk's account is consistent with the events which were unfolding at the time. Prof Li says that he did not need or want to condemn the PTU at the time because their private negotiations were proceeding on cordial terms. But there was an impasse on 28 June 2004: the PTU insisted on an extension of the PAP, but the EMB refused. Then, much to EMB's surprise, PTU decided to mobilize a hunger strike and garner public support. At this point, Prof Li's position hardened: if the PTU was going to escalate matters for no good reason and despite the cordial negotiations on 28 June, then he would have to respond accordingly. As he told the Chief Executive on 29 June, he was not going to talk to the Ombudsman about the possibility of extending the PAP after all. He was also going to ask Prof Morris to issue some sort of statement. It is likely that he would have been angry and frustrated at the time and expressed himself forcefully to Prof Luk. Prof Li denies, however, that he was angry at the time (day 34, p.186 lines 10-12).

340. In short, no matter how cordial the private negotiations between the EMB and the PTU were, the aggressive stance which the PTU was taking against the EMB in public must have created political pressure which Prof Li no doubt would have wanted to counter, in an equally assertive manner.

341. Evidence from other sources supports Prof Luk's version of events:

341.1. The Hon Mr Cheung Man Kwong has provided a statement to the Commission. He recalls that Prof Luk told him that Prof Li/EMB had asked HKIEd to issue a statement condemning PTU, but this was turned down by Prof Luk: [W2/32].

341.2. The evidence of Prof Morris, which was not challenged in cross-examination, is that after Prof Morris returned from his leave, Prof Luk informed Prof Morris of this conversation including the demand by Prof Li that Prof Luk issue a statement against the PTU and the use of the phrase: "I'll remember this, you will pay" (day 5 p.84 lines 14-25).

341.3. Ms Katherine Ma (who was the Director of Communications and Institutional Advancement of HKIEd at the time) testified that some time in June 2004, Prof Luk had told her about the conversation, although she could not

recall the time or date when this took place [W1/48].

(2) Did Prof Luk refuse Prof Li's request?

342. Aside from the competing versions given by Prof Luk and Prof Li, the other items of evidence all support Prof Luk's claim to have turned down Prof Li's request, whatever that may have been.

342.1. In an e mail sent from Dr Ng Shun Wing (a lecturer at the HKIEd and an executive committee member of the PTU) to the Hon Cheung Man Kwong at 9:39 am on 30 June 2004, Ng recorded that Prof Luk gave him a call. One of the matters Prof Luk relayed to Mr Ng was “李國章要求教院出聲明，教院拒絕脅迫聲明，但教院對今次事件也有原則性。” [W2/36].

342.2. Mr Cheung Man Kwong's evidence: see above.

342.3. Prof Morris's evidence: see above.

342.4. Ms Katherine Ma's evidence: see above. What is significant in her evidence is that Prof Luk told her that Prof Li was “very angry” [W1/48]; day 18 p.94 line 19; p.99 line 6. If Prof Luk had said that he would consider Prof Li's request and revert, there would not have been any reason for Prof Li to be angry.

343. These four pieces of evidence prima facie support Prof Luk's version that he turned down Prof Li's request. In this connection, it is necessary to bear in mind the evidence that Prof Luk had an understanding with the PTU that the HKIEd and the PTU would not step on each other; and it may be suggested that what Prof Luk told Dr Ng Shun Wing and Mr Cheung Man Kwong at the time may not have been the truth, as he would not wish to be seen as acting in breach of the understanding. However, such reasoning would be flawed. Even if Prof Luk did indeed tell Prof Li that he would consider whether to issue an announcement, this would not have been in breach of the understanding, and there would have been very little reason for Prof Luk to lie about this to Dr Ng Shun Wing and Mr Cheung Man Kwong at the time. Rather, the fact that Prof Luk had an understanding with the PTU rendered it more plausible that he did indeed flatly turn down Prof Li's request. Further, if Prof Luk did in fact say to Prof Li that he would consider making the announcement, it would be rather unlikely that he did not call back with a response. Having regard to all the evidence, we submit that there is sufficiently cogent evidence to find that Prof Luk did refuse Prof Li's request.

(3) What did Prof Li say in response to Prof Luk's refusal?

344. Prof Morris's evidence also supports Prof Luk's claim as to what Prof Li said to him in response to his refusal. As this was not

challenged in cross examination, this rules out the possibility that Prof Morris was mistaken, or untruthful, about what Prof Luk told him in 2004 about the conversation. The only possibilities (aside from the situation where the Commission is unable to make a positive finding) are therefore that (a) Prof Li did say “你唔肯出咗嗎，好，I’ll remember this, you will pay”, or (b) Prof Luk fabricated this phrase as early as 2004 when he told Prof Morris about the conversation.

345. When assessing the evidence given by Prof Luk, it is necessary to distinguish between the credibility of his testimony before the Commission, and the reliability of what he may have said in 2004.

346. There are obvious difficulties with Prof Luk’s evidence as given to the Commission. In particular:

346.1. When cross-examined by counsel for Prof Li, he denied there was any understanding between him and the PTU: day 13 p.65 lines 9 to 24. On further cross-examination by counsel for the Commission, he admitted that he had an understanding with PTU that HKIEd and PTU would not “step on each other”: day 15 p.75 line 2 to p.76 line 18.

346.2. The statement recorded in the notes of the Senior Management meeting that Dr Cheung was misquoted appears to be incorrect. Dr Cheung informed the

Commission not only that he had not been mis-quoted, but also that no one had consulted him as to whether he was in fact misquoted. When Prof Luk was asked about this (day 15 p.91 line 3; day 13 p.54 line 17), he suggested that it would have been Ms Katherine Ma who suggested that Dr Cheung had been mis-quoted. This was denied by Ms Ma: day 18 p.97 line 14 to p.98 line 6. He downplayed the Sing Tao report of what Mr Cheung said and said that it was unlikely he would have discussed it with Mr Cheung Man Kwong or Dr Ng Shun Wing (day 15, p.100 line 6 to p.101 line 12) but according to Dr Ng's email [W2/36], Prof Luk had called him up to disown Dr Cheung's statement as representing his personal view only.

346.3. If the telephone conversation, and the words "I will remember this, you will pay!" had caused Prof Luk to fear for the HKIED (day 12, p.33 line 20 to p.35 line 17), it is difficult to understand why he did not raise this for discussion at the senior management meeting the next day. The reason he gave for not repeating the words used by Prof Li (to avoid causing Prof Li embarrassment) (day 15, p.104 lines 4-14) is also rather unlikely.

347. The above suggests that Prof Luk may have had his own reasons (being his understanding with PTU) to reject Prof Li's demand, and that he wanted to secure a record at a formal meeting of the HKIED

which supported the stance he took on behalf of the HKIED vis-à-vis the SEM. However, neither of these points would suggest that he did not faithfully report his conversation with Prof Li to Prof Morris in 2004. If Prof Li had not said the words 你唔肯出咗嗎，好，I'll remember this, you will pay”, why would Prof Luk have fabricated this at the time?

348. When it comes to inherent probabilities, it has to be remembered that:

348.1. at the time, Prof Li would have been angry and frustrated at PTU;

348.2. Prof Li would have further been angry at Prof Luk's refusal to entertain his request to issue a statement;

348.3. Prof Li was not a person to hold back his feelings (cf. November 2005 taped conversation “Okay, Paul, I just thought I'd let you know because I'm a straight guy, I come out front...” [MLA1/164-17]).

349. It is therefore submitted that Prof Luk's version of Prof Li's response is more likely to be true.

(4) Did Prof Li exert improper pressure?

350. Whilst Prof Luk's fear after the conversation was due to the words "I will remember this, you will pay!" (day 12, p.34 line 6), Prof Luk considered that these were more a vindictive explosion in response to his refusal to accede to Prof Li's request, rather than pressure on him to issue the statement, although in re-examination he clarified that he did consider it a threat in that Prof Li was warning him about what might happen about the student numbers later (day 16, p.13 line 20). He says that the pressure which he felt to issue a statement came from the opening remarks of Prof Li during the conversation: day 15 at p.110 line 1 to p.111 line 15. This was when Prof Li had said "I want you to issue a statement to condemn the teachers who are staging a sit-in and the PTU" (day 12, p.20 lines 9-12). The request was issued in a "firm, commanding" tone (day 12, p.31 line 8).

351. Prof Li may well have said the words in a fit of anger. This does not mean that it was not an improper threat. Had these words been uttered before Prof Luk had said "no" (ie. demanding the issue of a statement and saying at the same time that if you refused, you would have to pay) there would have been little doubt that Prof Li was applying improper pressure on the HKIED to issue the statement he wanted. We do not think that the fact that the words were uttered after a refusal makes any material difference. A more timid person may, upon hearing the words, relent and agree to issue

a statement.

## **Section 8: Issues not directly related to the Allegations**

352. During the course of this Inquiry, the Commission has received a substantial amount of evidence regarding actions which were said to have been taken in order to disadvantage the HKIEd. These incidents, whilst having no direct relevance to the Allegations, shed light on the mindset of Profs Morris and Luk and hence will be relevant to the reliability of the evidence of Profs Morris and Luk in relation to the First and Second Allegations. A number of the more significant incidents and pieces of evidence are dealt with below.

353. The Commission has also received a substantial amount of evidence which relates in some way to the issue of the merger of the HKIEd. This is an issue which is relevant to the First Allegation. However, as mentioned above, under the section on the First Allegation, many of these events are not really relevant to a determination of the First Allegation, as they occurred some time after January 2004. These events may, however, offer some insight into the mindsets of the key witnesses who have given evidence in the Inquiry and hence the nature of the evidence they have given, and we therefore address the more important of those events in this section.

### Actions taken to disadvantage the HKIED

354. We will first deal with a number of incidents where it has been alleged by Prof Morris and Prof Luk that the EMB or Mrs Law criticized the HKIED or took action to disadvantage the HKIED.

### *Student numbers*

355. The complaints made by Prof Morris and Prof Luk relating to the cuts in student numbers of the HKIED have been analysed above. It is submitted that there was no real basis for a number of the complaints. The fact that the complaints were made are an indication of the mindset of Profs Morris and Luk. Whilst some of the cuts were, on their face, unexplained (for example, the reduction in FYFDs (primary level) between the First and Second Start Letters), it does not appear that Profs Morris and Luk sought to ask the UGC for the reasons; instead, they concluded that these were instances of attempts by the EMB to disadvantage them. This seems to have been because they suspected something was going on behind the scenes: cf. Prof Morris, day 8, p.150 line 23 to p.152, line 4.

356. A number of the other complaints had elements of exaggeration. For example, it was said that the allocation of nil places in the areas of arts, music and physical education in 2008/09 would mean that the departments of the HKIED would have to be closed down

and their capacity “destroyed”. There is no real evidence to substantiate this, nor does it appear to be a logical deduction, since there would be second and third students even in the year when no new students were taken on.

357. A number of other (relatively minor) complaints appeared not to be properly supported by the facts. For example, it appears that there were no cuts in the part time PGDE programs, contrary to Prof Morris’s claims; and it could not be said that the criteria by which EMB awarded their tenders were unknown.
358. All in all, these tend to suggest that Profs Morris and Luk were prepared to make allegations without being very careful to check their facts. At the same time, however, one should perhaps not be too critical of the suspicions which they held. Prof Morris had been told about the Government’s intention to rape the Institute and understandably, he would have been on the lookout for actions which might have been part of the rape. Furthermore, not all of EMB’s actions have been satisfactorily explained in this Inquiry: for example, the decision to fund an alternative ECE training provider in March 2004.

*“Every opportunity to promote criticism of the IEd”*

359. Reference has been made above to Prof Morris’s email of 21 May 2003 to Dr Leung saying “Fanny has taken every opportunity to

promote criticism of the IEd, with the Primary School being the most recent example. She has also been very critical of us at meetings with School Principals...I suspect she would like to keep us in a low status position because it will always allow the Govt to explain the failures of their Educational reform policies on the quality of teacher education..." [MLA2/533]. When asked what "opportunities" Mrs Law had taken to promote such criticism, Prof Morris referred to:

- 359.1. Mrs Law's interview with the SCMP in May 2002,
- 359.2. Mrs Law's comments about the Jockey Club Primary School, although Prof Morris could not remember what he had in mind,
- 359.3. the telephone conversation between Mrs Law and Prof Morris in October 2002 regarding the dismissal of Mr Ip and Dr Lai,
- 359.4. comments by principals that Mrs Law had encouraged them to criticize the HKIED,
- 359.5. Prof Li telling Prof Morris that Mrs Law was negative towards the HKIED (this seems to be a reference to the phone call which is the subject of the 1<sup>st</sup> Allegation), and

359.6. conversations with various people, including visiting academics, who relayed the impression that Mrs Law was critical towards the HKIEd.

See: day 7, p.42 line 23 to p.48 line 10; p.52 line 2 to p.54 line 11; p.108 line 20 to p.110 line 11; p.111, lines 5 to 25). Prof Morris initially considered that the release of the LPAT results was the most damaging incident, although he later pointed out that this incident occurred after the writing of his email.

360. The SCMP interview of May 2002 and the telephone conversation of October 2002 have been dealt with in an earlier section of these submissions.

361. As to the Jockey Club Primary School, its principal, Ms Doris Au, has supplied the Commission with a statement to the effect that Mrs Law was one of the school's staunchest supporters and has made a lot of effort to promote the school to the community [W1/213]. Prof Morris did not dispute that Mrs Law was complimentary about Ms Au's efforts.

362. As to comments by school principals, Prof Morris could not recall specific examples. As to the experiences of visiting academics of Mrs Law or the EMB, the Commission sought information from Prof John Elliott, Prof Robin Alexander, and Prof Mel Ainscow, who were mentioned by Prof Morris as the three persons who

“very distinctly” told him about situations which reinforced his impression about EMB/Mrs Law (day 11, p.128 line 15 to p.133, line 25). The statements of the three professors are at [W2/45], [W2/57], and [W2/92]. They do not provide much detail. What information is provided does not leave an objective reader with the impression that Mrs Law or the EMB had a particular grudge against the HKIED. It should also be noted that their contacts with Mrs Law or the EMB were in 2005, after the date of Prof Morris’s email.

363. However, it appears indisputable that Mrs Law did harbour some negative views about the HKIED, and expressed these from time to time. Prof Lo Mun Ling was told that the HKIED had no future [W2/27], and Prof Vivian Heung was told that the HKIED was poorly managed [W2/30]. These are witnesses whose work has been supported by Mrs Law and who have no discernible reason to tell untruths. It is also difficult to see how there could have been any misunderstanding on the part of these witnesses about what Mrs Law said – it is difficult to see how the comment that the HKIED had no future could be interpreted other than as a negative comment about the HKIED. It may be that Prof Morris was sensitive to incidents of this sort – as Prof Lo Mun Ling testified, Prof Morris reacted “very strongly” on hearing of her experience and she “felt very strange” and was “surprised” at his reaction (day 32, p.158 lines 9-13). This was clearly a much stronger reaction than her own.

364. Another witness who can be considered to have provided independent testimony on this issue is Miss Charmaine Wong, formerly of the UGC, who noted Mrs Law's doubts about the quality of the HKIEd's pre-primary education programs, and her "very negative" attitude about the HKIEd [E3/276]. Whilst there may be some doubt as to whether Mrs Law was referring to the quality of the HKIEd's programs or its student intake (a number of participants at the meeting appear to recall discussion as the latter, eg. Prof John Lee [W2/240] and Mrs Sylvia Tsoi Cheung [W2/288]), the impression that Miss Wong was left with was one of negativity towards the HKIEd.

*The Institutional Review of the HKIEd*

365. Reference has been made above to the paper of the UGC's Teacher Education Sub Committee of April 2003 proposing, inter alia, that the review panel would be formed in early April 2003; that it would visit the HKIEd in late June 2003, and that it would submit its report to the UGC in early August 2003 [U8/276 at 278].

366. However, on 25 April 2003, one of the two overseas panelists who was to conduct the review wrote to the UGC expressing reservations about traveling to Hong Kong because of SARS [U8/287-1]. It appears that the other overseas panelist had similar reservations. There was discussion of this problem, and a

contingency postponed timetable, between Ms Winnie Tse of UGC and Ms Winifred Ip-Fok of HKIEd [U8/281-10]. On 28 April 2003, the UGC decided to defer the Institutional Review to after September, in view of the overseas panelists' concerns. The panelists were notified accordingly [U8/287-3 to 287-6] and so was Prof Morris [U8/288].

367. In the meantime, however, the EMB had been having internal discussions as to whether the Institutional Review should go ahead. On 6 February 2003, Ms Winnie Tse of the UGC had sent an email to the EMB asking whether, in the event that self-accreditation was recommended, it would be necessary to get ExCo approval or to make legislative changes to implement this [U8/269]. On 17 March 2003, an internal file note M.10 prepared by Patricia Tsang raised the issue of whether, before reverting to the UGC, the EMB might first need to consider the long term development of HKIE, "eg. whether HKIEd should merge with a comprehensive university...An alternative would be to encourage the Institute to have more collaborations with other tertiary institutes to organise joint teacher education programmes...If the Administration has an intention to merge HKIEd with another university in the foreseeable future, allowing HKIEd to be upgraded to become a university and simultaneously planning for a merger would make the case more complicated and might cause embarrassment to the Administration. If the Administration really intends to go for a merger, it might be more appropriate for us to advise UGC to put

on hold the IR. Since the issue is much related to the higher education policy, PAS(HE)'s advice and SEM's steer might be required before we can decide how it could be taken forward [EMB14/1078]. Subsequently, on 15 April 2003, it was suggested that steer be sought from Mrs Law and/or Prof Li [EMB14/1081].

368. On 26 April 2003, Mrs Law responded: "I have serious reservation about giving HKIEd university status. Since we are going to have a new SG/UGC in June, I suggest UGC should withhold the institutional review of HKIEd until the new SG/UGC has had time to review the situation and develop a strategy for institutional merger [EMB4/1094]. Prof Li agreed on 29 April 2003: "SEM agrees with PSEM. We are not saying no to the review but the timing could be considered further" [EMB14/1094].

369. It would therefore appear that this was the reason why on 30 April 2003, Ms Susanna Cheung of the EMB sent a memo to Miss Charmaine Wong of the UGC, saying "Since the Administration is still deliberating on the future development of the Hong Kong Institute of Education (HKIEd), we have reservation about commissioning an institution review (IR) of the HKIEd at this stage. We therefore suggest that the timing for the IR should be further considered until the SG has reviewed the situation and developed a strategy for institutional merger" [E2/256].

370. On 16 May 2003, Prof Morris sent an email to Dr Lam, referring to

the Institutional Review which had been postponed from June because of SARS, but which he was now having difficulty in getting rescheduled; he had learnt from the Secretary General of the UGC that there had been “an input from EMB” [MLA2/597]. Dr Alice Lam replied on 21 May 2003, saying that “the PSEM office has given Peter the indication to wait and see. I believe this came from Fanny Law. At this point in time, all I can do without additional information, is to have a conversation with Arthur myself”. Dr Lam says that she would have called Prof Li, but did not recall him saying that the review should not proceed (day 23, p.52, lines 11-23).

371. Given the information which Dr Lam gave to Prof Morris in her email, it was not unreasonable for Prof Morris to take the view that Mrs Law had sought to delay the Institutional Review.
  
372. In August 2003, the UGC’s Teacher Education Sub Committee produced a paper in which it was noted that the UGC had postponed the visits of the Institutional Review panel to HKIED due to SARS, and set out a revised timetable rescheduling the visit to October 2003 [U8/295 at 296]. Prof Li met with the UGC on 20 August 2003, at which he said that he adopted an open mind on institutional integration, but considered that in view of scarcity of public resources, it had become increasingly important for institutions to collaborate with each other; and also made a number of observations in relation to the proposed Institutional Review of

the HKIEd which Michael Stone has accepted were “pretty negative” (day 22, p.22 lines 16 to 25) [U1/343]. Ultimately, however, Prof Li was recorded as saying that he had no strong views against the Institutional Review proceeding if the concerns he had raised could be addressed. At the UGC’s meeting of 19, 20 and 22 August 2003, the SEM’s observations and the question of whether the Institutional Review should be postponed pending the results of initiatives such as the study of the possibility of institutional integration, were discussed; it was agreed that the Institutional Review would go ahead [U1/329 at 337].

373. Prof Morris was apparently subsequently informed by the UGC’s Secretary General in October 2003 that Prof Li had “strongly requested” the UGC to delay or defer the Institutional Review so that considerations such as mergers could be discussed [MLA2/532].

374. In late January 2004, both Mrs Law and Prof Li supported the UGC’s recommendation that the HKIEd be granted self-accrediting status. Prof Li, however, indicated that no university status should be granted [EMB14/1085].

*Language Proficiency Assessment Test of 2003*

375. The way in which the LPAT results of 2003 were released appears to have been the most significant incident which caused Prof

Morris to view the EMB and Mrs Law with suspicion. In his email of 19 September 2003 [MLA1/206] he described it as “what has undoubtedly been the most damaging incident for the HKIED”. He attributed the way in which the information was released – which was, in his view, the cause of the negative publicity - to Mrs Law. He considered that the information had been released in a way which led to the media concluding that all the students who had failed were HKIED students. See day 6, p.101 lines 7-22. He also considered that this was part of the efforts to put pressure on the HKIED to merge (day 9, p.31 lines 11-14).

376. The background was as follows:

376.1. the LPAT was started in 2001 to set a benchmark for teachers of English and Putonghua (Prof Morris, day 7, p.54 lines 20-23);

376.2. as the deadline by which all the language teachers had to take the test approached, the number of candidates taking the test increased, and in 2003 nearly 3,000 teachers sat the test. Teachers with sub-degree qualifications would have tended to defer taking the test until nearer the deadline (Prof Morris day 7, p.57, line 9 to p.58 line 16);

376.3. in 2001, the results [EMB12/389] had been interpreted as showing that serving teachers performed better than those

who were not teaching (ie. students of the HKIEd) (Prof Morris, day 7, p.59, line 13 to p.61 line 15);

376.4. in 2003, candidates were allowed, for the first time, to declare voluntarily whether or not they were serving teachers [EMB12/395]. The reason was apparently because there was pressure on the Government to collect information in order to find out what percentage of the failed candidates were serving teachers. Prof Morris said he was not aware of this (day 7, p.58 line 20 to p.59 line 6; p.66 lines 2-19);

376.5. the results did not suggest that those claiming to be serving teachers performed any better than those who were not (Prof Morris, day 7, p.68, line 19 to p.69 line 11).

377. The results also stated that 333 out of the 645 teachers who had joined the profession in 2001/02 would no longer be eligible to teach English [EMB12/395 at 397]. The media interpreted this to mean that the 333 teachers had come primarily from the HKIEd: Prof Morris, day 7, p.74 lines 4-13. He considered that the EMB should have distinguished between the candidates who were sub-degree holders and others, and the failure to do so allowed the subsequent negative media portrayal. However, there is nothing to suggest the EMB had this data.

378. Prof Morris also considered that his viewpoint was substantiated by 3 matters: (a) the fact that the EMB's representative on the HKIED council had acknowledged that the LPAT results did not provide the breakdown of candidates' qualifications by degree / sub-degree and that it was unfair to put all the blame for the failures on the HKIED [IEEM1/102-1 at 102-7], (b) the fact that only after the damage had been done, Mrs Law commented that she was not surprised that many candidates had failed as they had followed sub-degree programs, and (c) the HKIED and EMB agreed to set up a liaison mechanism to avoid future problems, which was a recognition that the results had been unfair and damaging (day 7, p.82 line 4 to p.85 line 3).

379. It is submitted that objectively, the EMB could not be blamed for releasing the results in the way that it did. The test was designed to assess the suitability of candidates to teach English; if they failed, it surely did not matter whether this was because they were sub-degree holders. The EMB could therefore not be blamed for not having collected data on the qualifications of the candidates. A fortiori, it could not be blamed for the media's interpretation of the results.

380. Although the matter was covered in some detail in cross examination, Prof Morris could not agree that the release of the results had not been done to harm the HKIED (day 7, p.98 lines 12-18).

Events in 2006 relating to merger

381. There was a lot of interaction between Prof Li, Dr Leung and Prof Morris as regards merger in 2006. The relevant events were as follows.

*21 March 2006 – lunch at the Hong Kong Club attended by Dr Leung, Mr YK Pang, Prof Li and Mrs Law*

382. According to Mr Pang, the topic of deep collaboration was raised and Prof Li “encouraged” the HKIED to explore such opportunities [W1/216]. Prof Li accepted that it could have been that he was the one to have asked what was happening given that nine months had elapsed since the Deep Collaboration Agreement of July 2005 (day 35 p.85 lines 12-19).

*23 March 2006 – breakfast meeting between Dr Leung and Prof Morris*

383. According to Dr Leung, a breakfast meeting on 23 March 2006, Prof Morris had indicated that discussions with CUHK were not getting anywhere, and the blame lay with the CUHK’s Faculty of Education, which wanted to be involved in any joint programs being discussed. Prof Morris indicated that he really wanted (a) to share the RPg places of the CUHK, and (b) to take over the CUHK’s Faculty of Education; and if these could be achieved, he

would want to talk about a federation arrangement. Drinks were arranged with Prof Li to discuss the proposal. Dr Leung said that this proposal of Prof Morris “started the whole chain of events” (day 26, p.40 line 24 to p.43 line 14).

384. Prof Morris did not deal with this breakfast meeting specifically, but said that there were a number of breakfast meetings where Dr Leung made clear that there was a lot of pressure from the EMB for a merger and if it did not agree, it would be made unviable, especially in the area of ECE (day 5, p.114 lines 14-19).

385. Some corroboration of what Dr Leung said is found in Prof Morris’s email of 27 March 2006 in which he outlined 3 paramount concerns, one of which was that the CUHK’s Faculty of Education “would have to be incorporated within the HKIEd at the point where the HKIEd was to become part of a federal CUHK”. He further outlined the elements of the “package deal” he sought, two elements of which were the allocation of RPg places and a clear commitment on the role of the CUHK’s Faculty of Education [MLA1/231].

*29 March 2006 – drinks at the Hong Kong Club attended by Dr Leung, Prof Morris, Prof Li, Mr YK Pang*

386. According to Dr Leung, Prof Li was pleasantly surprised at the approach. He had no problem with the suggestion that the HKIEd

could have its own council, and that its funding should be ring-fenced. As to the takeover of the CUHK's Faculty of Education, however, Prof Li indicated that HKIEd would have to persuade CUHK about this. The Columbia model was discussed; Dr Leung had insisted that the president should be appointed by the HKIEd rather than the CUHK. It was suggested that Prof Li should organize a dinner so that the matter could be explored (day 26, p.43 line 16 to p.47 line 12). Prof Li generally agreed with this version of the drinks (day 33, p.216 line 25). Dr Leung claimed that there was no mention of the Chief Executive being dismissive at this drinks, contrary to Ms Ma's note [E2/367].

387. Prof Morris said that Prof Li was very concerned that progress was not being made more rapidly towards a merger, and indicated his willingness to support a federal model. He was getting impatient. It was at this drinks that Prof Morris got the belief that Prof Li was willing to consider a federal model (day 9, p.117 lines 14-22).

388. Mr YK Pang recalled that Prof Li was "very amicable" at this meeting and that Prof Morris discussed the Columbia model [W1/216].

*17 April 2006 – dinner at the Hong Kong Club hosted by Prof Li and attended by Dr Leung, Prof Morris, Prof Lawrence Lau, Prof Kenneth Young, Dr Alice Lam, Mr Michael Stone*

389. Prof Morris said that he went to the dinner thinking that Prof Li was supportive of a federal model, but it turned out that the purpose of the dinner was to tell him that the HKIEd would not be viable unless it agreed to a merger; this is what Prof Li said at the beginning (day 5, p.128 line 2 to p.129 line 12). Dr Leung supported Prof Li; Dr Lam and Mr Stone were quiet. Prof Lau's description of a merged model was not one which Prof Morris could support, because it involved the HKIEd becoming the undergraduate part of the CUHK's Faculty of Education, retitling of some staff to take them out of the Research Assessment Exercise, and a move to the CUHK campus. Prof Morris was all on his own. (Day 5, p.133 line 11 to p.136 line 5). He recalled a request that the parties get together to discuss what might happen next (day 9, p.130 line 25 to p.131 line 4).
390. Six months later, Prof Morris wrote a note of what happened at the meeting [MLA1/234]. His impression was that federation was not acceptable and there would have to be a merger.
391. Dr Leung recalled that Prof Morris put forward the Columbia model [W1/70]. He suggested that different people might have different recollections of what happened because different people talked about different things. He recalled that Prof Lau was gracious in dealing with HKIEd's proposal about RPg places. There was discussion about the HKIEd having a separate council, to which there were no objections. There was also reassurance that

the HKIEd's campus would not be taken over. Prof Lau was insistent that the CUHK senate would have the final say in the award of degrees, which Prof Morris reluctantly agreed to. Dr Lam agreed to ring-fencing and to look into the research assessment exercise. However, the sticking point was Prof Morris's request to take over the CUHK's Faculty of Education, to which Prof Lau could not agree because he would not be able to get this past either the faculty or the CUHK council; the only way in which the matter could be explored at all was if the HKIEd was part of the CUHK. Dr Leung expressed reservations because he did not want the HKIEd council being subsumed. So the matter could not proceed further and everyone decided to simply have a nice dinner. Dr Lam called out as everyone was leaving to ask the parties to revert in 3 months' time (day 26, p.48 line 6 to p.53 line 17).

392. Dr Lam recalled that Prof Morris discussed the Columbia model. She did not recall Prof Li rejecting it; the dinner was for all to express their views. She agreed she had told HKIEd that the status quo could not continue as hardly any progress had been made since July 2005. She agreed that she was prepared to ring fence funds. Otherwise, she did not say much at the dinner (day 22, p.114 line 24 to p.117 line 21).

393. Mr Stone recalled that merger was discussed, but the dinner was not all about merger (day 22, p.7 line 14 to p.8 line 6). He subsequently produced a brief for the Chief Executive, describing

the dinner. He said that “it was made clear to HKIEd that the status quo was not an option and that some form of merger or federation was in practice the only way to guarantee a long term viable future for HKIEd. Both SEM and C, UGC indicated flexibility in the roadmap and final arrangements, but they had to have an agreed endpoint, which should be a merger or deep federation. It was left that the two institutions’ Chairmen would take the matter forward and that they would revert to C, UGC/SEM within 3 months – i.e. July 2006 .... Informally, Prof Morris (President, HKIEd) has indicated that he personally does not feel able to recommend a merger with CUHK because: - the relationship with the Faculty of Education at CUHK would be very difficult – and CUHK management show no willingness to address this. - He feels CUHK simply wishes to take over (the resources of) HKIEd and are not serious in trying to retain its best features and integrate them in some way” [EMB5(2)/426]. This is the note of the dinner which was produced most contemporaneously. It presumably reflected Mr Stone’s view (and was agreed by Dr Lam (day 22, p.139 lines 21-22) and there is no apparent reason why he would have produced a slanted account. The note indicates that he did not perceive that the only endpoint put forward at the dinner was full merger.

394. Prof Li generally agreed with the version put forward by Dr Leung. He had arranged the dinner since Prof Morris had indicated at the earlier drinks meeting that Prof Morris indicated he was prepared

to talk to the CUHK; he wanted RPg numbers and to essentially take over the CUHK's Faculty of Education. Prof Li thought that rather than talking through him, it was better for both sides to sit together (day 34, p.5 line 7 to p.8 line 9). He described his role at the dinner as "facilitator" and the UGC's role as "onlooker" (day 35, p.39 lines 18-21).

395. He thought that Prof Morris was "asking for a lot of things without giving anything back", and the CUHK thought they had been accommodating as possible but there were not going to give up their faculty of education; there was therefore an impasse (day 34, p.18 lines 9-16).

396. Prof Li subsequently amended the brief prepared by Mr Stone. Its final form is at [EMB5(2)/449]. The changes he made included the following:

396.1. he changed "some form of merger or federation" to "some form of merger". Prof Li explained that this was because "merger" already included "federation", so he crossed out the latter (day 34, p.14 line 24 to p.15 line 6);

396.2. he changed "but they had to have an agreed endpoint, which should be a merger or deep federation" to "subject to an agreed end point of a merger". Prof Li agreed that this was a reference to some form of structural integration, and

not just deep collaboration (day 35, p.52 line 17 to p.53 line 13).

397. He accepted that the message given to the HKIEd was that the only way to guarantee a viable future was some form of merger (day 35, p.42 line 23 to p.43 line 23).

398. He agreed that the problem that surfaced during the dinner was that CUHK wanted to subsume the HKIEd council after the merger (day 35, p.60 lines 16-22).

399. Prof Lau said he recalled very little of the dinner. He remembered that the federal model was discussed. He said that merger was not discussed (day 24, p.3 line 10 to p.5 line 23). Prof Young recalled that the progress on joint programs was discussed (day 24, p.158 lines 6-13). Merger was not discussed because the respective councils had ruled it out (day 24 p.149 line 25). The CUHK's position generally was that if it were left to the CUHK, it would not be willing to enter into a merger; it responded because it was felt that this would be the responsible thing to do (day 24 p.97 lines 1-15).

400. It would appear that negotiations on federation foundered at the dinner because the sticking point was the relationship between the HKIEd and the CUHK's own Faculty of Education. As indicated in the email of March 2006 [MLA1/231], Prof Morris wanted the

HKIED to take over the CUHK's Faculty of Education; the CUHK was not willing to do this unless the HKIED became part of the CUHK. Thus, perhaps, Prof Morris came away from the dinner with the view that the CUHK wanted to take over the HKIED; Dr Leung came away with the view that no conclusion was reached [W1/70].

401. Whilst the events at this dinner do not have any direct probative value as regards the assessment of the First Allegation, they do indicate that:

401.1. Prof Li was not, at any rate in 2006, pushing for a full merger but was pushing for some form of merger;

401.2. Prof Morris was rather over sensitive or exaggerating when he suggested that the message he was given, by both Prof Li and the CUHK, was that nothing less than a merger would suffice. Whilst the difficulties in the relationship with CUHK may have been the origin for his views in this regard, it does not appear that CUHK's position was put forward as an ultimatum to the HKIED; rather, it was a sticking point which could not, at that stage, be resolved.

401.3. There was, however, pressure put on Prof Morris: it was made clear that the status quo was not an option and there had to be a federation or a full merger.

*6 June 2006 meeting*

402. It is the evidence of Prof Li, Dr Leung and Dr Edgar Cheng that on 6 June 2006, Dr Leung and Dr Cheng had a short meeting with Prof Li for the purpose of telling him that they were unable to take merger discussions forward following the 17 April 2006 dinner, but that efforts on deep collaboration would continue [W2/75-1 (Dr Leung)], [W2/231-8 (Dr Cheng)], day 35, p.65 lines 8-13 (Prof Li).

403. However, neither Prof Li nor Dr Leung told the Chief Executive about this.

*Subsequent events in 2006*

404. Dr Leung's breakfast meeting with Prof Morris on 10 June 2006, his meeting with the Chief Executive on 4 August 2006, and his heart-to-heart talk on 28 September 2006 are addressed in the next section of these submissions.

## Section 9: Credibility and reliability of witnesses

Prof Morris

### *Reliability*

405. Two points may be made against the reliability of the evidence of Prof Morris. First, as he acknowledged, and as was apparent from the course of his testimony, his memory for dates was not very good. Second, as he also acknowledged, he was “extremely cautious and sensitive as to what was going on with the EMB”, ie. about the EMB’s actions towards the HKIED (day 7, p.114 lines 14-16). There were two aspects to his sensitivity. First, he thought that Mrs Law was taking actions to disadvantage the HKIED. Second, he thought that Prof Li was pushing the HKIED to a full merger and that the CUHK wanted a takeover of the HKIED.
406. This means that as regards the First Allegation, it is possible that he could have transposed parts of other conversations into that of 21 January 2004 (for example, as to whether there was mention of the EMB having an anti-HKIED feeling). It is also possible that his sensitivity towards the EMB/Mrs Law led him to perceive that Prof Li had made reference to such a feeling, when in fact he had not; and that pressure was being put on him to initiate a merger.
407. As regards the Second Allegation, Prof Morris’s poor memory for

dates may not be of great significance, given that he fixed the dates of the four occasions on which Mrs Law requested him to dismiss staff by reference to events whose dates can be ascertained. On the other hand, it is possible that he confused conversations which did take place on those dates with conversations which took place on another occasion. Of course, should the Commission find that the discussions did take place, but not on the dates identified, it would be open to the Commission to make a finding accordingly. The difficulty is that there has not been any substantial evidence put forward regarding possible alternative occasions.

408. Also relevant to the reliability of Prof Morris' evidence on the Second Allegation is his sensitivity. As submitted above, it seems likely that he interpreted complaints from Mrs Law about negative portrayal of the teaching profession by HKIEd staff as encouragements to dismiss those staff.

### *Credibility*

409. When it comes to credibility, however, we would submit that, subject to the qualifications mentioned below, Prof Morris was generally an honest witness. He could easily have tailored his evidence to fit the intranet letter more closely, for example, by saying that an express linkage between merger and student numbers was made by Prof Li in the January 2004 conversation, or by saying that Mrs Law had made express requests for dismissal of

staff on more than one occasion. The fact that he may have had a sensitivity towards the actions and words of Prof Li and Mrs Law does not mean that he was dishonest in recounting his perception or interpretation of what they said or did. Of course, the degree of his sensitivity means that the reliability of his evidence may be questionable.

410. One area in which Prof Morris gave evidence which was doubtful in credibility was his stance on merger. He sought to give the impression that he had not actively sought merger; whilst he, like the council, kept an open mind, he was not particularly interested in any form of institutional integration; the issue had been thrust upon him by Prof Li. However, as set out more fully above (in paras. 50, 56, 58, and 142), in June 2003 he had indicated in an email to Dr Leung in June 2003 his “full support” for a “genuine federal arrangement” [E2/274]; in September 2003 he had agreed with Dr Leung’s view that the HKIED should take the initiative regarding merger negotiations [MLA1/206]; and following on from the lunch with Dr Lam and Mr Michael Stone in the same month, he had drafted a letter to Dr Lam, suggesting that the Niland study be expanded to advise on the longer term position of the HKIED [IE24/83].

411. Conversely, Prof Morris sought to a certain extent to play up the degree of pressure which he was receiving to initiate a full merger. For example, Prof Morris says that he objected to Dr Leung

secretly organizing a retreat with an agenda to promote merger (day 11, p.140 line 4 to p.141 line 3). Dr Leung denied that he sought to be secretive. He said that he wanted an open discussion but that Prof Morris was reluctant about this, because he feared that this might start rumours on campus, and that it might affect the then secret negotiations with the CUHK (day 25 p.140 line 1 to p.141 line 9). There is evidence to support Dr Leung's account: he announced that he wanted an open discussion at the council meeting of 26 February 2004 [IEEM1/121-1]; and Prof Morris' email of 4 March 2004 [E2/348] shows that he did express the concerns as described by Dr Leung.

412. One other criticism that could be made of Prof Morris was that he ought not to have discussed his evidence about Dr Lai Kwok Chan with Prof Luk. However, he did admit to this when asked.

#### Prof Luk

413. Prof Luk clearly shared some of the sensitivity which Prof Morris held. This appeared to be a combination of his own impressions and the briefings from Prof Morris (day 12, p.121 lines 2-19). By the time of the First Allegation, he had attended the 3 January 2004 meeting at which he found Prof Li "very forceful" in trying to get the institutions to accept funding cuts (day 12, p.119 lines 21-24), and he was told by Prof Morris that the HKIEd would be the most disadvantaged institution in terms of the funding cuts and student

numbers (day 12, p.122 lines 2-20).

414. As for credibility, it is submitted that there were a number of areas in which Prof Luk's credibility was open to question.

414.1. His evidence as regards the involvement of Dr Lai in the seminar of 29 October 2002 was extremely unsatisfactory, as submitted above in para. 290. His claim to have understood Dr Lai Kwok Chan to have been a "full collaborator" with Mr Ip on the October 2002 conference could not be satisfactorily explained, either on the basis of the book given to him by Dr Lai or his discussion with Dr Lai shortly before he was due to give evidence.

414.2. When cross examined about the Third Allegation, he was not straightforward in disclosing his agreement not to "step on" the PTU.

414.3. He described his and Prof Morris's reaction to the January 2004 telephone conversation as being shock at the naked threat made by a senior Government official when interviewed by RTHK as recently as February 2007, which does not accord with either his or Prof Morris' description of their reaction in the witness box.

415. It should also be borne in mind that Prof Luk would have had an

incentive to give evidence in accordance with what was stated in his intranet letter.

416. The reliability and credibility of Prof Luk's evidence needs to be taken into account primarily when assessing the Third Allegation, for which the Commission will have to consider the relative reliability and credibility of the evidence of Prof Luk and Prof Li. His evidence on the First and Second Allegations is of a hearsay nature. Although he heard Prof Morris' side of the January 2004 conversation which is the subject of the First Allegation, he acknowledged that his recollection of this was a mix of Prof Morris's interpretation and recounting of what Prof Li said, and that he did not have occasion to really think about the details of the conversation until 2007.

#### Mrs Law

417. There were a number of areas in which Mrs Law's evidence was clearly found wanting in terms of credibility.
418. First, Mrs Law's evidence with regard to the allegation made by Prof Mok was unsatisfactory. All along, her case on the principal issue – whether she asked Prof Mok to dismiss Mr Ip – was that she could not recall. In cross examination, it became a positive assertion that she had not, when it was pointed out that an absence of recollection was inconsistent with her insistence that she

recalled she did not say “at least he could not be promoted”.

419. Second, Mrs Law denied that she had made any negative comments about the HKIED. However, this is plainly contradicted by the evidence of Miss Charmaine Wong, Prof Lo Mun Ling, and Dr Vivian Heung, all of whom could not have any reason to fabricate evidence against her. It may be said that this does not go to any substantive issue of fact in this Inquiry. But her endeavour to hide the fact that harboured negative feelings towards the HKIED is relevant when it comes to assessing whether she took any acts which were designed to harm the HKIED. In any event, the fact that Mrs Law was demonstrably less than frank in this part of her evidence must tell against the reliability of her evidence generally.

420. The Commission has heard evidence as to the remarks allegedly made by Mrs Law on the occasion of a lunch in May 2000 in Toronto, and also her conduct at a meeting in February 2005 referred to as the “notorious” meeting. It is submitted that it is unnecessary for the Commission to come to any finding on these matters since none of them really assist in the determination of the matters under the terms of reference.

Prof Li

*What Prof Li wanted in terms of merger*

421. In considering the credibility of Prof Li's evidence on the First Allegation, it is submitted that it is relevant to bear in mind what he was hoping to achieve in terms of merger for the HKIEd. As submitted above, it was no secret that Prof Li was an active proponent of merger for tertiary institutions, and the HKIEd in particular. One question is whether, as Prof Morris claimed, he wanted a full merger of the HKIEd, or would have been satisfied with some other form of institutional integration.

422. Prof Li's evidence was that he had no fixed idea as to the form of institutional integration which he hoped institutions would pursue. The aim was to improve quality, and a federal model would have achieved this. See day 33, p.81 line 16 to p.82 line 14.

423. This would appear to be logical. A number of pieces of evidence also support his evidence in this regard:

423.1. at the HKIEd council meeting of 28 November 2002 [IEEM1/79]: Prof Li said that it was up to the HKIEd to consider and decide on the partner, as well as the form, of any future collaboration. Whilst it may be said that this statement was made for the consumption of the council, it

may equally be said that given the forceful way in which Prof Li had expressed his views in the past, if his view was that full merger was the only acceptable option, there was no reason why he would not have said as much on this occasion;

423.2. at a meeting between Dr Leung, Dr Edgar Cheng, and Prof Li in August 2004, Prof Li had indicated that as long as HKIED decided to go ahead, he would support “which institution with, + which model”: as recorded in Ms Katherine Ma’s note of 12 August 2004 [IE4/350]. Of course, it may be said that since the report came from Dr Leung, its accuracy may be in doubt if Dr Leung did not represent the position accurately to Prof Morris;

423.3. Mr Michael Stone’s draft of the brief for the Chief Executive, recounting the 17 April 2006 Hong Kong Club dinner, described the message given to the HKIED as being that “some form of merger or federation was in practice the only way to guarantee a long term viable future for HKIED” [EMB5(2)/427].

424. It may be the case that as time went on, Prof Li became more anxious over the fact that little progress had been made. Thus Prof Morris said that Prof Li was “very impatient” at the drinks of 29 March 2006. As Prof Li said on day 37 p.58 lines 5-7 “I have been

very patient. After five years of the Sutherland report – at that point [November 2005] it is only three years – nothing has been done”. But the fact that he became more anxious for something to be done does not mean that he changed his mind as to the type of integration to be achieved.

425. If Prof Li was not pushing for a full merger of the HKIED in January 2004, and he was aware that Prof Morris was amenable to some form of integration, this tends to suggest that he had no particular need to antagonize Prof Morris with a threat.

*Difficulties with Prof Li's credibility*

426. Having said this, there were a number of areas in which Prof Li's evidence was clearly found wanting in terms of credibility.
427. His evidence as to whether it was he or Prof Morris who had raised the idea of merging all the TEIs and having Prof Morris lead the merged entity was not believable. As mentioned above (under the narrative of chronological events, para. 26), Prof Li ascribed importance to the meeting. It is extremely unlikely that all he wanted to do was to play a passive part and be in “listening mode”. When the email from Mrs Law to Mr YC Cheng (Prof Li's deputy secretary) of 10 July 2002, saying “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” [EMB5(2)/532] was put to Prof Li:

427.1. He initially attempted to deflect the questioning by asking what offer had been made (day 34, p.105 line 19 “A proposal of what, Mr Yu?”; p.106 line 15 “What is the offer? Or what is the alleged offer?”).

427.2. He then suggested that the offer as claimed by Prof Morris to have been made was confusing (day 34 p.108 lines 5-10).

427.3. He then said that he could not have made an offer which he could not carry out (day 34 p.108 lines 16-22) and that he did not make the offer. It is worth noting exactly what he said: “I did not make that sort of suggestion to him, nor was it an offer” (day 34, p.109 lines 1-2). Shortly afterwards, he said he could not remember who suggested the idea (day 34, p.111 lines 21-24).

427.4. He then suggested that the offer referred to in the email was a reference to his offer to attend the HKIEd council to discuss merger (day 34, p.109 lines 5-16). This was not an answer given off-the-cuff; he indicated that he had “thought over this one”.

427.5. On day 35, Prof Li said that there was no specific proposal

about merging the TEIs, but he “perhaps suggested to him [Prof Morris], “Does that mean that bringing everybody under the roof of HKIEd will improve everybody?” and that “if this is what he [Prof Morris] is proposing, putting everything under HKIEd, then he would be heading it, would he not?”: p.110 lines 5-22.

428. Prof Li’s evidence as to whether he used the word “rape” at the lunch of 19 July 2002 is difficult to accept. As submitted above, there is simply no reason why Dr Simon Ip or Mr Alfred Chan would either have told an untruth, or have been mistaken as to the use of the word; and there is no basis to suggest that “rape” was merely Dr Ip’s interpretation.

429. These two matters show that Prof Li wanted to downplay how keen he was on getting the HKIEd to enter into some form of merger. This perhaps does not matter too much since Prof Li ultimately did said “I have never refused or said that I don't push them to merge” (day 37 p.9 lines 20-21). Furthermore, perhaps a more important issue when assessing whether or not a threat was made in the 21 January 2004 telephone conversation is whether Prof Li perceived that Prof Morris needed any “push” towards merger. However, these two matters reflect poorly on the general credibility of Prof Li and indicate the necessity to treat his testimony with care where it is not corroborated.

430. In a similar vein, Prof Li attempted to downplay just how forcefully he might deliver his message about the desirability of merger. In his examination in chief, he claimed that his comments at the 4 October 2002 tea party of “先禮後兵” and “權在我手” were said as a “joke”, “jest” and “repartee” (day 33, p.110 lines 14-20). However, he had prepared for the tea party by thinking about what he was going to say, although he claimed that he had not thought about what he was going to say in terms of merger, and although he went further than giving support as requested by HKUST and CUHK, this was because he was pressed (day 34, p.91 line 23 to p.92 line 18). But even if the sentiment was expressed as a joke, this did not mean that it did not represent Prof Li’s genuine belief; and indeed he did not seek to suggest otherwise.
431. Prof Li also attempted to downplay what he was recorded to have said in the November 2005 telephone conversation with Prof Morris. He said that he was frustrated, but neither angry nor threatening; he was loud only because he was using a speakerphone (day 37 p.29 lines 18-24); he was happy since he had said he was “happy” (day 34 p.50 lines 15-16). However, listening to the conversation objectively, it is difficult to characterize Prof Li’s suggestion “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 the 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

merged with another university, whether it should be disbanded altogether. I shall be very happy to carry out such a study if you so wish. Don't force my hand on this one, Paul" as anything other than a threat [MLA1/164-9]. Whilst Prof Li was no doubt feeling provoked during the telephone conversation of November 2005, what is relevant is his present characterization of what he said at the time: it provides an insight into what Prof Li would consider to be threatening. Cf. Prof Li's denial of having made a threat in the January 2004 conversation which is the subject of the First Allegation.

### Dr Leung

#### *Dr Leung's point of view*

432. When assessing the credibility and reliability of Dr Leung's evidence, it is helpful to bear in mind the approach which he is likely to have adopted to the issue of merger.
433. Dr Leung has served on the council of the HKIED since its inception in April 1994, and even prior to that was a member of the provisional council (day 25, p.122 lines 1-5). This is some indication of his commitment to the institution.
434. He took up the chairmanship of the council in April 2003. It was Prof Li who approached him on behalf of the Government to sound

out whether he was interested. At the time, he was aware that the HKIED was facing difficulties ahead, as student numbers were projected to decline. The task force on the future of the HKIED had already been set up. His thinking was that there had to be a fundamental, strategic change in order to reposition the HKIED and take it through the difficult times foreseen. It would not be adequate for the HKIED to continue doing what it had been doing (day 32, p.62 line 22 to p.64 line 12). He says that he did not have any detailed discussion with Prof Li about the future of the HKIED (day 32 p.64 line 13 to p.65 line 8), but given Prof Li's own views about institutional integration, it is likely that Prof Li would not have approached Dr Leung if he had thought that his vision for the HKIED's future was very different to that of his own.

435. No doubt it was with this mindset that he (together with Prof Morris) met with Dr Lam and Mr Stone of the UGC in September 2003, and indicated their willingness to explore some form of merger. He went on to give the same message (with Mr Alfred Chan) at lunch with Prof Li and Mrs Law in October 2003. It appears from the contemporaneous emails (eg, 8 June 2003 [E2/274]; 19 September 2003 [MLA1/206]) that he shared a common vision with Prof Morris.

436. It appears that by February 2004, however, there was some divergence between Dr Leung and the senior management. Dr Leung and Prof Luk have each commented rather negatively on

each other's performance at the meeting of 23 February 2004. It is possible that this is present-day embellishment by either Prof Luk or Dr Leung. There was definitely some divergence of views between Dr Leung and Prof Morris over the wisdom of organizing a council retreat: see Prof Morris' email of 4 March 2004 [E2/348].

437. It was said that Dr Leung had pushed for full merger of the HKIED at the council retreat of April 2004; if not, the HKIED would die a death by a thousand cuts. Apart from Profs Morris and Luk, a number of other witnesses testified to this: for example, Ms Katherine Ma, who had the impression that Dr Leung was trying to sell merger (day 18, p.134 lines 23-24), and Dr Angela Cheung, who had the impression that Dr Leung was concentrating on the merger model (day 23, p.135 lines 1-2).

438. However, it appears from the notes of Dr Leung's introductory speech taken by Ms Connie Wong of the HKIED council secretariat [IE26/88] that Dr Leung had presented all five options outlined in the Niland report and not just merger, and had also made comments to the effect that neither extreme was appropriate, the HKIED did not have to merge, and that if it did not, this did not mean the end of the HKIED.

439. For reasons which are perhaps not entirely clear, the participants at the retreat appear to have gone away with the impression that Dr Leung was pushing the HKIED towards a full merger. Dr Leung

suggested that possibly, the participants got the wrong impression because at the time, he was unable to disclose the fact of the secret negotiations with the CUHK as the reason why he had “changed his mind” and was re-opening the issue of merger, which the participants thought had been earlier considered and ruled out (day 28, p.58 lines 2-14). Whatever the reasons may have been, though, this incident probably goes some way towards explaining why a number of persons of the HKIEd considered that Dr Leung was pushing for a full merger.

440. A consensus having been reached at the second, June retreat to explore the affiliation / federation model, and Dr Leung having written to Dr Edgar Cheng of the CUHK on 28 September 2004 [W1/209-1] to suggest formal discussions to explore deep collaboration, excluding a full merger, the involvement of Dr Leung seems to have diminished. The discussions with CUHK were carried out by the HKIEd’s management.

441. In November 2005, Dr Leung was criticized by many within the HKIEd for his comments at the graduation ceremony, where he suggested that one way of getting university title was to merge with CUHK. It is submitted that Dr Leung explained, convincingly, that this was an unfortunate occasion on which he had not handled a reporter’s question well: day 26, p.36, line 1 to p.40 line 15.

442. In 2006, Dr Leung’s involvement in merger discussions was

revived. It would seem likely that by this stage, he was anxious to see action being taken. After the dinner at the Hong Kong Club on 17 April 2004, he would have been given the clear message that the status quo was not an option. This perhaps explains what was recorded in Ms Ma's note as having been told to Prof Morris on 8 May 2006: "P's job is at stake if not agreeing to pursue" [E2/368].

443. It is clear that by 2006, he was extremely frustrated with what he perceived as senior management's unfounded suspicions of EMB, which was damaging the HKIED's relationship with the Government, and at the same time, impeding any constructive progress in the development of the HKIED. See day 26, p.75 line 22 to p.76 line 23.

*Criticisms made of Dr Leung's credibility*

444. The evidence of Profs Morris and Luk (and a number of other witnesses from the HKIED) contained a number of attacks on the credibility of Dr Leung. It is submitted that many of these, when understood in the light of the above background, were perhaps not quite justified.

445. Dr Leung was accused of being two-faced, giving one picture to the HKIED and another to the Government; or formally claiming to follow the council's position which was against a full merger, but secretly pursuing a full merger. It is perhaps not difficult to see

why this accusation was made. He had to balance a number of competing considerations. On the one hand, he would have wanted to push for change at the HKIED, both because of his own personal views and because of the clear message coming from the Government; hence the pressure felt by Prof Morris. On the other hand, Dr Leung was also seeking to persuade Prof Morris and Prof Luk that Prof Li did not have a hidden agenda for a full merger. A further complication is that Dr Leung clearly disapproved of the antagonistic approach which Prof Morris and Prof Luk adopted in their dealings with the Government; he thought it was important to have a constructive relationship with any external stakeholders (day 26, p.87 lines 6-10). As a result, he would have refrained from upsetting Prof Li and at meetings with Prof Li where Prof Morris was also present, would presumably have given Prof Morris the impression that he was siding with Prof Li. Prof Morris said as much, for example, of the 17 April 2006 dinner.

446. The notes of Ms Ma reflect these competing considerations which operated on Dr Leung. On 4 August 2006, for example, he met with Prof Morris and Ms Katherine Ma to discuss what should be raised with the Chief Executive later that day. Ms Ma made a note of the points which were agreed to be raised [E2/375]. However, when it came to the meeting, Dr Leung was selective as to which ones he raised (although he had not told Prof Morris and Ms Ma in advance that he would be selective). In her report of what (according to Prof Morris' account to her) was raised with the

Chief Executive, Ms Ma wrote down “merger wd only relocate problem” and “merger won’t wk politically”, but Dr Leung did not raise those matters with the Chief Executive (day 32, p.120 line 15 to p.121 line 19). She also noted down “positive”, a reflection perhaps of the reassurance that Dr Leung wanted to give, but which only served to upset Prof Morris and Ms Ma later when they perceived that pressure was being applied again.

447. It is not said that Ms Ma fabricated her notes, or took them down inaccurately. It is also unlikely that Prof Morris fabricated matters to tell to Ms Ma with an eye to use in the future purposes, since the notes were produced in this Inquiry at the Commission’s request. They therefore probably do reflect what Prof Morris was told. To the extent that the matters recorded involve an element of interpretation, it may be that they are tainted by Prof Morris’s sensitivity; but to the extent that the matters are simply recounting matters of fact, such as the suggestion that criticisms were made of HKIED at ExCo [E2/367], they are probably an accurate reflection of what Prof Morris was indeed told. That being the case, the notes do show that Dr Leung did put pressure on Prof Morris in 2006 to take more active steps towards merger. In the light of Dr Leung’s own aspirations for the HKIED, and the message which he was receiving from Prof Li and later the Chief Executive, this is not surprising. He may therefore well have said things to Prof Morris along the lines of what is recorded in Ms Ma’s note at [E2/370] (urging Prof Morris, at the breakfast meeting of 10 June 2006, to

hold a staff forum and if not, “I step down next April”).

448. Dr Leung did not deny, though, that he was an advocate for change, and therefore no doubt made efforts to impress upon Prof Morris the need for change.

449. Aside from the fact that Dr Leung tended to downplay the pressure which was Prof Li was exerting and which he himself was exerting on Prof Morris, however, it is submitted that generally, Dr Leung was a credible witness. His evidence also appeared reliable in that he had a fairly accurate good recollection of dates and events which took place on such dates.

450. Additionally, a number of criticisms which were made of Dr Leung did not appear justified. One of the examples given by Prof Morris of Dr Leung’s secret agenda to merge the HKIEd was the lunch on 14 October 2003 hosted by Dr Leung and Mr Alfred Chan and attended by Mrs Law and Prof Li. Mrs Law’s note of the lunch recorded that Dr Leung had asked for “an early indication of the plan to merge HKIEd with CUHK” [EMB5/162]. Prof Morris indicated astonishment at this as he said he had been unaware of any such discussions. However, Prof Morris’s email of 19 September 2003 [MLA1/206], written to brief Dr Leung on some matters ahead of the lunch, showed that he and Dr Leung had in fact agreed that the HKIEd should take the initiative in relation to merger proposals.

451. It may be said that the conflicts in the evidence of Prof Morris and Dr Leung suggests that it could not be the case that both are credible witnesses. We submit that the true position was probably this: Prof Morris was of the view that Prof Li wanted a full merger, which he was firmly against, and he was suspicious of anybody who might be pushing Prof Li's agenda on his behalf. Dr Leung, for his part, was frustrated at what he perceived to be stagnation of the HKIEd. He thought that change was necessary, but Prof Morris was not willing to consider this. Dr Leung perhaps expressed his frustration and desire too forcefully in his discussions with Prof Morris; and Prof Morris came to form the view that Dr Leung was pushing for a full merger, to the extent of linking this with the question of his reappointment. The room for misunderstanding is illustrated by what happened at the heart-to-heart talk on 28 September 2006: Dr Lai Kwok Chan confirmed that Dr Leung did not expressly link the issue of Prof Morris' reappointment with the issue of merger (day 19, p.15 line 21 to p.16 line 4), but some participants got this impression, perhaps because Dr Leung expressed his frustration with what he perceived to be the problems of the leadership of the HKIEd and also discussed his views of the future of the HKIEd, which the management did not share. Dr Leung Yan Wing was present at the talk and he acknowledged that the issues were presented separately but the impression he received was that they were related [W2/102].

## **Section 10: Terms of Reference (c)**

452. Paragraph (c) of the Terms of Reference requires the Commission:

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

453. Any recommendation the Commission makes must therefore be in the context of the findings in (a) and (b) above. Those findings are necessarily made within the narrow compass of the matters inquired into. These relate in the main to communications between the EMB and the Institute on the matters of (i) institutional integration, (ii) UGC funding and student numbers, (iii) the publications of views by the staff of the Institute on EMB policies and (iv) the issuance of public statements by the Institute on public affairs.

454. It seems to us that within these parameters, the Commission should consider:

454.1. Are existing channels of communication sufficient and effective?

454.2. Is there any way in which misunderstanding of any advice from the Government can be avoided?

454.3. Is there an avenue for redress if the Institute should disagree with the advice from the Government?

We shall address these questions below.

455. The available channels of communications between the Government and the Institute are:

455.1. under section 5 of The Hong Kong Institute of Education Ordinance, Cap. 444, the Chief Executive in Council may give to the Institute directions with respect to the exercise of its powers or the achievement of its objects, either generally or in any particular case;

455.2. under section 8(1)(d) of the Ordinance, the Council of the Institute shall consist of at least one but not more than 3 public officers appointed by the Chief Executive;

455.3. the UGC whose roles and functions include, inter alia, promoting “responsible understanding between the institutions, the Government and the community at large” (UGC Notes on Procedures para. 1.6 [UA/2]);

- 455.4. meetings of HUCOM;
- 455.5. meetings and communications between Council Chairman and the SEM and the PSEM, and between the President/Vice-Presidents of the Institute and the SEM and PSEM;
- 455.6. other meetings and communications between staff of the Institute and senior Government officials in specific bodies set up by the EMB (such as ACTEQ) or on an ad hoc basis.
456. Section 5 does not appear to have been used in the past. This section is probably intended for formal directives to be given by the Government to the Institute, and is inappropriate for normal day-to-day communications.
457. The purpose of section 8(1)(d) is presumably to establish a means of communication between the Government and the Institute. The evidence suggests, however, that this means has not been used. The Government appointee tends to remain passive to avoid accusation or perception of Government interference (Dr Leung, day 32 p.134 lines 13-18). Dr Leung has expressed the view that it may not be a good idea to retain any Government appointee in the Council. If his view is adopted, there would be one less means of communication.

### Means of communication

458. In terms of the means of communication, one suggestion is to have a committee or forum at which the Institute can reflect its views to the Government, and vice versa. Prof Morris pointed out that the Advisory Committee on Teacher Education and Qualifications (ACTEQ) – a body giving advice on teacher education policy – used to include representatives from TEIs, and those were taken off in 2002 (day 10 p.145 line 13 to p.146 line 7.) It would appear from the evidence that such a forum is likely to be of assistance on promoting better communication between the Government and the institutions at least on the issue of funding and manpower planning. That process should commence even before the issuance of the Start Letter. Mrs Law told the Commission that in April 2006, the EMB met with all TEIs to brief them on teacher projections (day 31 p.206 lines 2-14). This was said to be an improvement to previous situations. Certainly, more transparency and communications with the Institute’s representatives on manpower projections and any advice that the Government may be tendering to the UGC would assist the Institute.

### Avoiding misunderstanding

459. Various other witnesses have been asked to proffer their views on this term of reference. (See Professor Morris: W1/115 paras. 79-82; day 10 p.144 line 21 to 149 line 17; Professor Lau, day 24 p.66 line

13 to p.78 line 15; Prof Kenneth Young, day 24 p.205 line 11 to p.206 line 17; Dr Leung, day 26 p.107 line 16 to p.120 line 5; Mrs Law, day 31 p.194 line 15 to p.200 line 12; p.206 lines 2 to 14; Prof Li day 37 p.151 line 10 to p.154 line 16, p.166 line 7 to p.168 line 10.) Prof Li attributed the problems which have surfaced to a lack of trust (see day 37 p.153 line 12). When the parties in communication enjoy trust and confidence in each other and there is no disagreement or discord, there should be no problem in communication. However, in circumstances where that trust has broken down, or where the parties are communicating over matters which are potentially controversial or even confrontational, it becomes important that the communications be properly recorded, both to avoid misunderstanding, and as a record to avoid disputes. It would be unfortunate if either party to a communication thought it necessary to resort to clandestine and unilateral recording of conversations.

#### Avenue for redress

460. Communications may hit a deadlock. In such an event, the parties should seek to agree as to what the disagreements are. There should then be an avenue for resolving the matter. There does not seem to be one at the moment. The Chairman of the UGC has sometimes been called upon to perform the role of a facilitator in discussions between the Institutions and the Government. However, this is done on an informal basis, and the Chairman is not regarded as an

established avenue for grievance redress. Where there is power for the Chief Executive to call upon the assistance of the UGC as a whole to advise on aspects of higher education (see paragraph 1.1(b) of the Notes on Procedure of the UGC [UA/2]), it is probably unnecessary and too unwieldy in most cases to call upon the services of the whole Committee.

461. In our submission, consideration should be given to the establishment of a formal avenue for redress. This can be done by the setting up of a committee. Any person or body of persons appointed to such a committee should be independent and perceived to be independent of Government, and must enjoy the trust and respect of the institutions.

2 June 2007

BENJAMIN YU S.C.

YVONNE CHENG