

**Decisions made by the Appeal Authority, as assisted by the Appeal Committee, regarding appeal cases received from staff members of the School of Law**

**Background**

The contracts of appointment of a number of academic staff members of the School of Law in City University of Hong Kong are due to expire on 30 June 2002. It is clearly stated in the contracts of these staff members that their appointments will not be automatically renewed. Consequently there is a need for the University to consider whether further contracts will be offered to them. Pursuant to the University's Staffing Procedures, the renewal of contracts of these staff members was considered by the University's Approving Committee, taking into consideration, inter alia, the recommendations of the School Staffing Committee. Decisions made by the Approving Committee were conveyed to the individual staff members concerned on 12 December 2001.

The University's Staffing Procedures provide that staff members who are aggrieved by such decisions may lodge an appeal with the President. By the close of the prescribed period under the University's Staffing Procedures, appeals had been received from seven staff members who were either not offered a further contract, or were given a one-year extension of service or a one-year terminal contract.

In accordance with the appeal procedures under the University's Staffing Procedures, the President appointed Professor Edmond KO, Vice-President for Education and Dean of Students, as the Appeal Authority to consider these appeals. The decisions of the Appeal Authority would be final. To assist the Appeal Authority in his deliberation, an Appeal Committee was set up. The membership is as follows:

Chairman	Professor Edmond KO	Vice-President for Education and Dean of Students, CityU
Member	Mr Benjamin LIU, GBS	Former Justice of Appeal
	Mr Roderick WOO, JP	Senior Partner, F. Zimmern & Co (Solicitor)
	Professor Matthew CHEN	Dean, Faculty of Humanities and Social Sciences, CityU
	Professor Ferdinand GUL	Chair Professor, Department of Accountancy, CityU
Secretary	Dr Ellen KO	Acting Director of Human Resources, CityU

The University was determined that the appeals should be dealt with fairly and equitably. Before the Appeal Committee commenced deliberation, the staff members concerned were notified of the appointment of the Appeal Authority and members to the Appeal Committee. They were extended an opportunity to provide further information to the Appeal Committee, which they did.

**Deliberations of the Appeal Committee**

To begin with, the Appeal Committee was minded to consider the appeals on the basis of these staff members' full written submissions unless it should find, at any stage, that the appeals or any of them could not be justly entertained or resolved without further materials or information. The staff members were notified of this and were asked to submit reasons in writing if they did not accept the modus operandi. No staff members raised any objection. Some, however, provided additional materials for the consideration of the Appeal Committee.

The Appeal Committee thus proceeded to consider the comprehensive submissions from the staff members. In its thorough deliberation, the Appeal Committee satisfied itself that it was able to reach a conclusion on each of the appeals without seeking further information. From

first to last, the Appeal Committee was determined to do all it took to ensure fairness in its consideration of procedural and substantive complaints.

Having considered all the cases, the Appeal Authority, as assisted by the Appeal Committee, made his decisions regarding each appeal. In summary, the Appeal Authority upheld the decisions made by the Approving Committee in respect of four staff members who were not offered further contracts of appointment. The Appeal Authority changed the decisions made by the Approving Committee in the cases of three other staff members who were given a one-year extension of contract or a terminal contract of one year. A two-year contract was offered to each of these three staff members.

The Appeal Committee has also expressed its views on the procedural propriety and fairness in the consideration of the staff members' re-appointment. These views are summarized below.

#### No Specific Comments on Performance Given to Staff Members

The Appeal Committee noted that no specific comments were recorded by the School Staffing Committee under the respective performance criteria in the Re-appointment Forms of the individual staff members concerned. There was no apparent reason as to why the Forms had not been duly completed. Each Form contained an identical paragraph which read "In giving consideration to your application for re-appointment, the School Staffing Committee followed the guidelines set out in the University's document: *Initial Assessment for Continual Appointment ... Re-appointment on completion of Fixed-Term/Crossing of Salary Bar*. The School Staffing Committee gave careful consideration to all aspects of your teaching, research and administration and your more general engagement with the School, the University and the wider community in the light of the documentation accompanying your application for re-appointment. Having given careful consideration to your application, the School Staffing Committee decided to recommend that ..." The Appeal Committee found that it would not be right for the School Staffing Committee not to have duly completed the Forms.

The Appeal Committee had considered the idea of requesting the School Staffing Committee to provide an ex post facto evaluation on the Forms, but since the Committee was able to deal with the evaluation with the assistance of the submissions from the staff members concerned and the materials referred to in such submissions, the Appeal Committee had decided not to ask for such ex post facto evaluation from the School Staffing Committee.

#### Previous Evaluations Not Considered

The Appeal Committee noted that the staff members' Performance Appraisal Reports were not included in the information considered by the School Staffing Committee. The record indicated that the Approving Committee did take these Reports into account. The Appeal Committee was of the view that it would not be right for the School Staffing Committee not to have considered previous evaluations in making its recommendations regarding the staff members' performance, notwithstanding the fact that the contents of the appraiser's comments had not been communicated to all the staff members concerned at the time when the School Staffing Committee met.

## Evaluation of Scholarly Work Written in Chinese

The Appeal Committee was of the view that assessment of scholarly work written in Chinese would not call for personal knowledge of the language in every committee member of either the School Staffing Committee, the Approving Committee or the Appeal Committee. The Appeal Committee noted that some appellant staff members published extensively in Chinese. In the absence of evidence that the School Staffing Committee had availed itself of the aid of experts who were conversant in Chinese and with a perspective regarding PRC's recent law development, the Appeal Committee was not satisfied that the School Staffing Committee had taken full advantage of all the relevant materials. The evaluations had thus been impaired to that extent. In making its own evaluations, the Appeal Committee had, however, recourse to extensive information which was pertinent in each case, including up-to-date developments in appropriate areas.

## Judgment on Performance

The staff members asserted that they had met the requirements for re-appointment in accordance with the relevant criteria. The Appeal Committee fully considered the four main criteria for assessing the performance of an academic staff for re-appointment, viz, teaching; research; professional activities; and campus and community citizenship. In assessing each case, the Appeal Committee was guided by the expected level of performance commensurate with the academic rank of the staff member concerned, the information of which is in the public domain as set out in the University's publications.

The Appeal Committee examined in detail the comprehensive submissions and the submitted publications of each staff member. The Appeal Committee in reaching its judgment in each case was guided by a holistic evaluation of these submissions in the light of the four criteria noted above. The Appeal Committee was satisfied that a fair evaluation could be and was thus made in each case.

## Membership of the School Staffing Committee and the Approving Committee

The Appeal Committee found no irregularity in Professor Michael McCONVILLE, Dean of the School of Law, serving both as the Chairman of the School Staffing Committee and a Member of the Approving Committee. The Dean's dual membership on the two committees was prescribed by the University's Staffing Procedures, and served to ensure, inter alia, an effective exchange of information and views between the lower level committee and the higher level one. Further, the Appeal Committee noted that the Dean served in the Approving Committee in an ex-officio capacity, and like other members had only one vote.

As to the membership of a particular person on the School Staffing Committee, the Appeal Committee concluded that the role she played in the deliberations of the re-appointment exercise would not and did not taint her with partiality, since she was a staff member of a different rank. Her work was also on a different focus from that of the staff members who appealed. Her re-appointment would not and did not impact on the decisions affecting the appellant staff members. However, with hindsight of the commotion generated and perhaps as a matter of counsel of perfection, the Appeal Committee felt that it might not have been unwise to appoint another appropriate staff member in place of this particular person as a full member of the School Staffing Committee.

## Likelihood of Discrimination

The Appeal Committee considered this complaint but found that there was no substance in the allegation of racial discrimination.

Some of the staff members concerned invited the Appeal Committee to pit their cases against that of another staff member of the School of Law, who was offered re-appointment. The Appeal Committee reasoned that when other postings were still open and available after a particular re-appointment, then that re-appointment decision could not and would not prejudice other staff members.

The Appeal Committee was also aware of the fact that a co-opted member (who was not a full member) of the School Staffing Committee enjoyed no voting right, though he had a voice in the deliberation. The Committee was satisfied that such a restricted right applies as of course to the like composition of any other staffing committee, irrespective of ethnicity, and that it was not discriminatory.

## **Conclusions**

The Appeal Committee concluded that there existed procedural and other flaws in the evaluation process undertaken by the School Staffing Committee and hence the evaluation of the eligibility of renewal of contract of the staff members concerned could not be regarded as comprehensive. It considered that it would not be right for the School Staffing Committee not to have duly completed the Re-appointment Forms. Nor would it be right for the School Staffing Committee to have refrained from considering previous evaluations in making recommendations regarding staff members' performance. In some cases where the ability to understand the Chinese language was necessary, the Appeal Committee was of the view that assistance should have been sought from experts conversant with Chinese and with a perspective regarding PRC's recent law development.

As mentioned above, the Appeal Committee found that it was not improper for Professor Michael McCONVILLE, the Dean of School of Law, to sit as a member of the Approving Committee, and there was no conflict of interest due to a specific staff member sitting in the School Staffing Committee. There was no substance in the allegation of racial discrimination.

It was the view of the Appeal Committee that the final conclusions it recommended and accepted by the Appeal Authority were fairly and equitably reached in all respects. The Appeal Committee was wholly satisfied that any shortfalls in procedure as well as in substance were able to be remedied. To do this, the Appeal Authority decided that a two-year contract of appointment (Note: a contract normally spans two years) be offered to three staff members who were originally given a one-year extension of contract of appointment or a terminal contract of one year. In respect of the four staff members who were not offered further contracts, the Appeal Authority upheld the decisions made by the Approving Committee. The decisions of the Appeal Authority had been individually conveyed in strict confidence to the staff members concerned. In the communications to them, the Appeal Committee's comments in respect of their performance were provided for the staff members' reference.

The Appeal Authority acknowledged that the assistance of the Appeal Committee, comprising both internal and external members, was of immense value to him in arriving at those decisions.