

Model For An Independent Complaint Mechanism For Higher Education

(I) Introduction

The University Action Group, has, for several years, advocated the importance of setting up an independent complaint mechanism (獨立申訴機制) to handle complaints about University management, misuse of public funds, non-compliance of lawful procedures and staff complaints, which is believed to be a more cost-effective-problem solving tool as well as a credible channel to be trusted by the public.

We are pleased to see that the abovesaid idea has finally been taken into serious consideration by the Report of the Higher Education in Hong Kong resulted from the review chaired by Lord Sutherland (the "Report").

The Report stated, "power and authority go in line with responsibility and accountability". (Chapter 3.2) With full support of academic freedom, it is, however, not an excuse for University top management to squander public money. Bad management, lack of standards for assessment and unfairness done in the University, have indeed, become a factor for smothering creativity for academic. Only under a truly fair, transparent and healthy management can academic freedom be really upheld. The Report also stated, while "academic freedom still exists for individuals, it as a negotiated freedom that cannot ignore other factors, including public accountability." (Chapter 3.24)

The Report also says "Such freedoms are to be agreed between funders, whether public or private and the funded institutions, ... and specific forms of freedom are essential ... but they are not without constraints" (Chapter 6.25)

(II) Wrong Interpretation of "Autonomy"

The gist of autonomy is to protect academic freedom, which is to refer to the freedom to transfer knowledge to students and public as well as to extend the furtherance of knowledge and its pursuit. But now academic freedom has been trampled on by misuse of public fund, non-compliance of procedures in the Universities of Hong Kong.

Higher Education Institutions in Hong Kong shall enjoy autonomy for academic pursuit of knowledge. However, this autonomy should not be an excuse for the abuse of power constituted by the management of the Universities, administratively and financially.

(III) Lack of Checks and Balances upon University Management

Legislative Council is the only body representing public voice and to guard public interest, though not all members are directly elected. However, under the wrong use of "autonomy" which has been trickily interpreted by many top management of the

Universities to be equivalent to academic freedom, University management basically are not subject to any public scrutiny apart from the press. Universities are not accountable to the Legislative Council, nor to the Department of Education. UGC is only supervising the allocation of funds to different Universities, but could not be an effective force to serve as checks and balances upon University abuse of power and mismanagement. The judiciary cannot help resolve the problem either. Firstly, it is not cost-effective to use the court for resolving such problems. Secondly, it is too time-consuming. One must remember all legal costs spent by the Universities are also public money. Why don't we design a more effective tool to handle complaints about Universities?

Recent examples at the City University of Hong Kong for mismanagement, misuse of public fund and unfair handling of complaints and contract renewals have alarmed the public of the need to set up a more effective system to supervise the University management.

Sadly, the City University is still not responsive to public discontent and insist to protect the top management. It is also heard that they even want to take measures to inhibit the students and staff to comment on the University misdeeds in public. This is a vivid example of infringement of academic freedom by abusing the “autonomy” given by the public to the top management of the University.

(IV) University Councils Systems in Hong Kong are not Effective

University councils are systems left over by the colonial systems. By that time, the University Council members were honorary. Moreover, many of the council members are extremely busy. How could an external member who does not really understand the operation of the University to have any "say" in the Council? As a result, the Council is always controlled by a very small number of people who mainly are within the senior management of the University. For example, the City University Council has announced to set up an independent committee to investigate the City University Law School Event but it is nearly one month, the terms of reference and the composition have not yet been confirmed. Students and teachers have submitted their opinions to request transparency of the formation of the committee as well as to announce the terms of reference as soon as possible but all these opinions are neglected

(V) Lack of Public Scrutiny will lead to More Misuse of Funds

Lack of transparency and public scrutiny only leads to more waste of public fund. Without the pressure of being subject to an effective checking system, Universities are easily tempted to overspend. Overspending by public corporation is not to be connived at under any circumstances, in particular, when the overspending is done at the expense of teaching staff and funding for students.

(VI) Internal Appeal System Failed

Right now, the appeals systems of the University run by the subordinates of the Presidents has lost the confidence of academics and staff to be a true adjudicator over the disputes involving their superiors. As a result, many academics are lodging court

cases, which has proven to be ineffective to solve dispute, as discussed before. For example, City University is amending its internal appeal procedures but providing but providing double standards for promotion and dismissal mechanism. (Attachment II) Can one imagine how much money a University is to waste again on these matters as legal costs when disputes occur? Court cases can be avoided if a more credible and effective complaint system can be set up.

(VII) Arbitration as Reference

In the world, there are many different ways to solve disputes ranging from conciliation, mediation, ombudsman, outside-court settlement, arbitration and litigation.

In business world, arbitration has always been a more popular model for disputes resolution, as in arbitration, the names of the parties would not be disclosed and the procedures are much simpler than the court proceedings the arbitral award is legally binding. Moreover, arbitrators are composed of experts of the field recognized by both parties as credible persons so that their judgements are trusted and it is a much cheaper way to be chosen commercially. For complaints about the government bodies, ombudsman would be the most appropriate channel as it is not only handling disputes as such, but also handling complaints about government bodies as to their mismanagement issues, misuse of public fund, etc. In the aspect of higher education, it would fall within the scope that suits to exercise a model combining with both.

At present, higher education institutes are not subject to effective checks and balances system, which is worse than primary and secondary schools whose management are subject to the supervision of the Education Department. For complaints which does not fall within the jurisdiction of ombudsman or not suitable for lengthy court cases press or public hearing in the Legislative Council has become the only channel for the complainants to voice their grievances. If these two channels are also blocked, Universities are, in substance, enjoying absolute freedom which are not subject to public scrutiny at all, which, of course, cannot be allowed when all the Universities are spending public money.

(VIII) Independent Complaint Mechanism must be set up

Lord Sutherland, in his report, clearly suggested Hong Kong to consider either the appointment of an Ombudsman for the tertiary education sector, or to extend the jurisdiction of the present Ombudsman to cover the tertiary education sector. (Chapter 3.27) "Such an exercise will necessarily include a review of the relevant Ordinances and, where appropriate, proposals for legislative changes should be made" (Chapter 3.25)

We welcome the above suggestion but would like to put further recommendations to the idea to ensure a smooth, credible and effective system to be run in the future:

- a. We would support the comment of the General Purposes Committee of the University of Hong Kong that the new ombudsman must be specifically appointed for the tertiary education sector as the existing Ombudsman already has a lot of duties in the office which may not be able to tackle the expansion

of workload. A new ombudsman who shall be an esteemed person in the tertiary education sector, shall also be assisted by a group of “tertiary education arbitrators” when making important decisions especially when it involves high level mismanagement or abuse of power in the University.

- b. The arbitrators shall be composed of academics and administrative staff from different institutions. A list of arbitrators shall be selected by University staff and the concerned complaints can veto the choice of arbitrators who might have conflicts of interest upon a particular case. (Attachment III) These are not complicated rules. They are, in fact, very simple rules practiced for a long time in arbitration which has become a more and more popular model solving commercial disputes.
- c. The new ombudsman office must have the integrity and power to take actions and to investigate into the concerned matters. The decision made by the ombudsman must have binding effect upon both parties so that the problem is really solved. The power of the ombudsman and the decision made by him must be protected by law, namely, it must be a legally enforceable decision to ensure the effectiveness of the ombudsman. In short, the decision made by the new ombudsman must have legally binding effect. Thus, relevant laws, as expected by Lord Sutherland, might necessarily be amended to accommodate the change.

In the long run, it is certain that the new ombudsman system can save a lot of public resources and at the same time, subject to the existence of a more effective checks and balances system, Universities will surely be more disciplined in their way of spending money and internal management. We have seen success in this way in many wide aspects in life.

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