



中華人民共和國香港特別行政區政府總部教育統籌局
Education and Manpower Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

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18 July 2008

Clerk to Education Panel
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn : Miss Odelia Leung)

Dear Miss Leung,

Panel on Education - Follow-up Action

I refer to your letters of 11 October 2007 and 15 November 2007, conveying Members' request for the Administration to provide information to explain its stance and views on academic freedom and comments on the Research Report on academic and institutional freedom of higher education in the United Kingdom, New Zealand and Hong Kong prepared by the Legislative Council Secretariat (the Report) respectively.

Academic freedom is a very important social value in Hong Kong. The Administration attaches great importance to, and has all along been, upholding the autonomy of our higher educational institutions, and will not interfere with the internal management and academic freedom of the institutions. The Department of Justice, on behalf of the Secretary for Education, has applied for judicial review on part of the findings in the Report of the Commission of Inquiry on Allegations relating to the Hong Kong Institute of Education. As we consider that part of the findings of

the Report, namely the findings of improper interference with academic freedom on the basis of direct contacts between a senior Government official and a critic of educational matters, is wrong in law and in principle, we are seeking the guidance and clarification of the court on this important issue.

Our comments on the Report are set out in the Annex for Members' information.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Amy Wong".

(Amy Wong)
for Secretary for Education

**Legislative Council Panel on Education
Academic Freedom and Institutional Autonomy**

The Administration is grateful to the Legislative Council Secretariat for producing the comprehensive report which compares various features of the higher education systems in United Kingdom, New Zealand and Hong Kong. In Chapter 5 of the Report, several important issues are highlighted and we would like to set out our views on them.

(a) Legal protection of academic freedom and institutional autonomy

2. Academic freedom is a very important social value in Hong Kong. The Government attaches great importance to, and has all along been upholding the autonomy of our higher educational institutions, and will not interfere with the internal management and academic freedom of the institutions. As set out in the Report, direct legal protection of academic freedom and institutional autonomy in Hong Kong is mainly provided through the Basic Law. Article 137 of the Basic Law states that “Educational institutions of all kinds may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the HKSAR. ...”. Furthermore, Article 34 of the Basic Law states that “Hong Kong residents shall have freedom to engage in academic research, literary and artistic creation, and other cultural activities”. In addition, there are other relevant provisions relating to academic freedom such as freedom of speech and publication as set out in Article 27 of the Basic Law which states that “Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession, and of demonstration; and the right and freedom to form and join trade unions, and to strike”.

3. The eight University Grants Committee (UGC)–funded institutions are statutorily autonomous bodies. They have their own ordinances and statutes which lay down the powers and governance structure of the respective institutions. While the terms “academic freedom” and “institutional autonomy” do not appear in the ordinances and statutes, they provide the institutions with the power and freedom to carry out its objects and functions.

4. Legislative provisions aside, institutional autonomy is specifically spelt out in the UGC Notes on Procedures which form the basis of understanding among the UGC, the Government and the institutions of their respective roles in higher education. Paragraph 1.22 of the Notes

on Procedures sets out the five main areas of institutional autonomy, namely selection of staff, selection of students, control of curricula and academic standards, acceptance of research programmes, and allocation of money within the institution. The Administration has all along respected and upheld institutional autonomy in accordance with the Notes on Procedures.

5. As regards protection for employees who raise issues of concern in the public interest, while there is no specific legislation in this respect, individual institutions have stipulated in their internal guidelines that all complaints are to be dealt with in confidence and the identity of the complainants will not be revealed, without their permission, to anyone other than those involved in investigating the complaints. Employees will not be penalized for making a complaint which is justified and made in good faith.

(b) Governing structure of higher education institution

6. Similar to the United Kingdom and New Zealand, the composition of the governing bodies of our institutions is set out in law. The eight UGC-funded institutions are autonomous bodies governed by their own ordinances. The ordinances specify the composition of the Councils as the governing bodies of the institutions. Due to historical and other reasons such as the different philosophy, religion, culture and circumstances of individual institutions, the ordinances for the eight UGC-funded institutions, including the provisions setting out the composition of the Councils, do vary.

7. Pursuant to the recommendations of the Higher Education Review (the Review) conducted by the UGC in March 2002, the UGC-funded institutions have reviewed their own governance and management structures to see if they are suitable for modern day needs. Arising from the review, the University of Hong Kong, City University of Hong Kong and Hong Kong University of Science and Technology have introduced legislative amendments to reduce the size of and change the composition of their Councils. As the duties and responsibilities of the Council of an institution are primarily concerned with the operations of the institution, the institution should be in the best position to decide the most appropriate composition of its Council. The Administration will only offer advice and observations for consideration by the institutions for more effective governance, having regard to the recommendations of the Review.

8. Traditionally, the Chief Executive (and former Governors) has been the titular head of the institutions with a view to maintaining the linkages between the Administration and the institutions, and to demonstrate the Administration's support for the higher education sector. The powers and duties of the Chancellor are specified under the governing ordinances of the institutions, which primarily concern appointment of council members and conferment of degrees and other honorary awards. Members appointed by the Chief Executive are usually lay members who come from a wide spectrum of the community, including but not limited to the Executive Council, the Legislative Council, the business and industry community, the school sector, professional bodies, etc. It should be noted that in the legislative amendments introduced by the two universities mentioned in paragraph 7 above, the category of "public officials" as members to be appointed by the Chancellor to the council has been removed.

9. There have been concerns that institutional autonomy might be adversely affected as the Government appoints a significant number of members to the institutions' councils. It should be noted that the number of council members appointed by the Government varies among the institutions, ranging from 10% for the Chinese University of Hong Kong (CUHK) to 69% of the Hong Kong Polytechnic University (PolyU)¹ and with the percentage figure below 50% for five institutions. These members are appointed in their personal capacity, in view of their past and likely contribution to the institution.

(c) Funding arrangement of higher education

10. The UGC was established in Hong Kong in 1965 as a non-statutory advisory body to advise the Government on the funding and strategic development of higher education in Hong Kong and to provide assurance to the Government and the community on the standards and cost-effectiveness of the operations and activities of the UGC-funded institutions. Specifically, the UGC determines the allocation of recurrent grants and the distribution of student number targets among its funded institutions, having regard to the Academic Development Proposals submitted by the institutions. It also advises both its funded institutions and the Government on campus development plans and

¹ Following the review of its governance structure, PolyU has proposed reducing the size of its Council and adjusting the Council's composition. It will be initiating necessary legislative amendments regarding the size and composition of its Council in due course.

student hostel projects made by institutions, with a view to supporting their academic and overall development.

11. All members of the UGC are appointed by the Chief Executive in their personal capacity, having regard to their expertise and experience, and their likely contribution to the higher education sector in Hong Kong in terms of local and international networking and professional input. The size of the UGC is flexible, and usually ranges between 20 to 25 members. At present, the UGC comprises 24 members (including the Chairman), of whom nine are accomplished academics and higher education administrators from outside Hong Kong, six are local academics of high standing, and eight are eminent community leaders (including the Chairman). The Chairman of the UGC's Quality Assurance Council also serves as an ex-officio member on the Committee. All UGC members are prominent, independent-minded leaders in their respective field. The worry that UGC is merely a rubber-stamp and lacks independency is unfounded.

12. The UGC has also implemented measures to enhance its transparency. For example, it makes available its background information, policies and activities on its website. It also publishes an annual report. Furthermore, the UGC Notes on Procedures, mentioned in paragraph 4 above, is available on UGC website.

13. The level of recurrent grants for the UGC sector is primarily based on student number targets as submitted to the UGC by individual institutions, and discussed and agreed with the UGC. The UGC then assesses the funds required, using its funding methodology, and submits its recurrent grant recommendations to the Government. Once the level of recurrent grants has been approved by the Chief Executive in Council and subsequently by the Finance Committee of the Legislative Council, the UGC will allocate the recurrent grants among its funded institutions. The UGC's funding methodology provides a rigorous assessment of the resources required to meet the teaching and research targets of each institution, and includes an element of funding specifically related to the institutions' performance in research. Once allocations are approved, institutions have the freedom and responsibility to determine the best use of their resources. Neither the Administration nor the UGC will dictate how the resources are to be allocated and utilized within the institution.

14. The UGC performs an important role as a "buffer" between the tertiary institutions and the Government. This involves supporting and protecting academic freedom and institutional autonomy on the one hand

and taking into account the legitimate interests of the society and the Government on the other. Throughout the years, the UGC has competently carried out this very essential role. The Government is indeed very grateful for the advice that the UGC has rendered on the application of funds and other aspects of higher education.

(d) Employment relationship of higher education institution

15. Staff recruitment and remuneration matters fall squarely within the autonomy of the UGC-funded institutions. The Government will not interfere with the internal affairs of individual institutions. Similar to the United Kingdom and New Zealand, academic staff may be appointed on either substantive terms or fixed-term contracts according to individual circumstances. To provide the UGC-funded institutions with maximum flexibility in determining the remuneration packages for their staff to suit individual circumstances, the linkage between various salary scales of the staff of the UGC-funded institutions and civil service pay has been removed with effect from 1 July 2003. Since then, institutions have been free to determine the appropriate remuneration packages for their own staff.

16. All UGC-funded institutions have in place established grievances and complaints mechanisms to handle staff complaints, including complaints from staff who feel aggrieved by the employment terms. The mechanisms are in place to suit the particular circumstances of each institution. The procedures are clearly defined and made known to staff.

Education Bureau
July 2008