

**Written Submission on the Legislative Council Secretariat's
Research Report on Academic Freedom and Institutional Autonomy of
Higher Education in the United Kingdom, New Zealand and Hong Kong**

Submitted by
The Executive Committee,
Academic Staff Association of the Hong Kong Institute of Education
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In this submission, each of the relevant sections of the *Report* is quoted, followed by our suggestion(s).

1. Legal protection of academic freedom and institutional autonomy

5.1.4 In the HKSAR, direct legal protection of academic freedom and institutional autonomy is mainly through the *Basic Law (BL)*. However, *BL* does not provide a detailed definition on the meaning of academic freedom. There is no reference to academic freedom in other laws of the HKSAR besides *BL*.

In order to operationalize the legal protection of academic freedom and institutional autonomy stipulated in the *Basic Law*, a more concrete definition of academic freedom and provisions for its protection should be incorporated in the relevant ordinances. The *Report* cites the case of New Zealand, where “Academic freedom is explicitly provided for in the *Education Act 1989 (EA)*.” (Section 3.2.4) Something similar should be done in Hong Kong.

A very useful description of what academic freedom means is cited by the *Report* from The *Recommendation concerning the Status of Higher-Education Teaching Personnel*: “all teaching-education personnel should enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right of liberty and security of the person and liberty of movement. They should not be hindered or impeded in exercising their civil rights as citizens, including the rights to contribute to social change through freely expressing their opinion of state policies and of policies affecting higher education. They should not suffer any penalties simply because of the exercise of such rights.” (Section 1.2.6) This should serve as a good reference point for the effort to institutionalize the protection of academic freedom in Hong Kong.

2. Introduction of disclosure protection laws to the HKSAR

5.1.6 Unlike the HKSAR, both the UK and New Zealand have disclosure protection laws to protect employees of an organization who make disclosures of information about serious wrongdoing in or by the organization.

It would be both morally proper and in the public interest that whistle-blowers be protected against retaliation by the introduction of disclosure protection laws to the HKSAR.

3. An independent, statutory body responsible for higher education funding

5.1.21 Unlike the situation in the UK and New Zealand, the respective roles of the Government and UGC in the HKSAR are not defined by law. UGC, a non-statutory advisory committee body since its establishment, reports to CE. The UGC Secretariat, as a Government department, comes under the policy and housekeeping responsibility of the Education Bureau. The Secretary-General of UGC (SG(UGC)) is the head of the UGC Secretariat. SG(UGC) and the other Secretariat staff are responsible both to UGC and the Secretary for Education.

In order to avoid undue influence by the Government on the higher education funding body, the option of replacing UGC with a statutory body like the Higher Education Funding Council for England (Section 2.3.10) should be seriously considered.

4. An independent mechanism to handle grievances and appeals by staff of all higher education institutions

4.4.7 The grievance handling procedures of UGC-funded institutions have been a major area of concern to the Panel of Education of LegCo. In the Report of the Panel on Education 2002-2003, LegCo Members were of the view that there was a need to establish a sound mechanism to handle staff grievances and complaints in the higher education sector.

4.4.18 There is no legal provision that requires the institutions to set up a dispute handling mechanisms dealing with employment relationship problems. In any event, some institutions have a set of procedures for handling general staff grievance or appeals, although they may not be specifically established for dealing with employment-related complaints. However, there is a great variety in their functions and specification among the institutions.

Since 1999, our Association has supported the idea of establishing an independent mechanism to handle grievances and appeals by staff of all UGC-funded institutions.

5. Explicit policies on academic freedom to be promulgated by all higher education institutions

4.2.26 None of the terms of reference of the councils of the eight institutions makes reference to academic freedom. Among the eight institutions, only HKU and HKUST have an explicit policy on academic freedom. HKU's policy was developed by a senate committee after Dr Chung's Case, comprising a working definition of academic freedom and a list of academic freedom enjoyed by the University and its members with corresponding responsibilities..... HKUST's policy is enshrined in the employment contracts of all academic staff.....

All higher education institutions should have an explicit policy on academic freedom.

6. Power of the Government over HKIED to be withdrawn

4.2.22 The power for the Government to give advice is explicitly provided for in the *HKIED Ordinance*. Under section 5 of the *HKIED Ordinance*, the CE in Council is entitled to give HKIED ‘*directions with respect to the exercise of its powers or the achievement of its objects, either generally or in any particular case*’ and HKIED ‘*shall comply with any directions given by the CE in Council*’.

It is a gross understatement to describe the power allowed the Government by the *HKIED Ordinance* as that of “giving advice”. The actual terms used in the *HKIED Ordinance* are “giving” and “complying with” “directions”. Such overwhelming power that the Government could potentially exercise over HKIED is very dangerous and should be withdrawn.

7. Influence of the Government on the composition of the councils of higher education institutions to be reduced

5.1.7In the UK, the law requires that the governing body of post-1992 universities and colleges shall consist of not fewer than 12 and not more than 24 members. They must include independent members, students, teachers and co-opted members. *About half of the members are drawn from outside the institution. New members are appointed by the governing body. The chairman of the governing body is appointed by the governing body from among its independent members.* [Italics added]

5.1.8[The council of a tertiary education institution in New Zealand], comprising between 12 and 20 members, must include staff members, students, the chief executive of the institution and four persons appointed by the responsible Minister. *The council elects one of its members to be the chairman of the council.* [Italics added]

5.1.9The Chief Executive of the HKSAR (CE) is the Chancellor of the eight institutions, *who also appoints the chairman of the respective councils.* The number of council members appointed by the Government varies widely among the institutions. Except for the two oldest universities (the Chinese University of Hong Kong (CUHK) and the University of Hong Kong (HKU)), *the other six institutions all have a fairly significant number of council members appointed by the Government.* [Italics added]

In order to avoid undue influence by the Government, the number of Government-appointed council members of higher education institutions should be reduced to a small minority, and the chairperson of the respective councils should be elected amongst its own independent members.