

# 「大廈外牆維修問題多多」

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大廈的外牆是一棟大廈重要的支柱及部份，而且面積很廣，對大廈的安全、外觀等影響很大。若大廈外牆破落、漏水需要維修，涉及的費用亦相當龐大。簡而言之，維修大廈外牆的費用是由有關大廈的業主負責分攤。其實有關維修外牆部份，常遇到頗複雜的責任問題，而且涉及頗多訴訟。

爭論之首是何謂「外牆」。大廈公契(公契)很難找到其定義。在公契就有以下常見的英文字眼："External Walls", "Main Wall", "Exterior Walls", "Exterior parts", "Exterior Areas", "Structure and Fabric of the Building", "Outer Walls", "Garden Walls", "Boundary Wall"等。而中文字眼就除「外牆」，「圍牆」外，比較少見其它描述。建築物管理條例(334章)亦沒有外牆的定義，而只有「公用部份」的定義；在附表一就列出；「外牆及承重牆」，「圍繞通道」，「走廊及樓梯的牆壁」等。

要確定大廈外牆維修的責任，重要的是首先要決定大廈外牆的業權或使用權誰屬；即大廈外牆是一位業主的私人物業或是大廈的「公用部份」。如屬公用部份則應是全體業主的責任。建築物管理條例有關「公用部份」的定義是:-

公用部份(common parts)指-

(a) 建築物的全部，但不包括在土地註冊處註冊的文書所指明或指定專供某一業主使用，佔用或享用的部份；

(b) 附表1指明的部份，但上述文書如此指明或指定的部份除外。

有些公契清晰地列出公用部份包括大廈的外牆及其它設施，如無列出，就唯有借助建築物管理條例去界定。

但是正如上文用英文描述的牆或外牆，亦會出現爭駁，例如某一單位的外牆對比該單位所在大廈的外牆，圍牆等。

較多爭駁的是怎樣界定外牆是「專供某一業主使用，佔用或享用」。

有關外牆業權或使用權可能出現以下情況：

- (一) 大廈公契訂定外牆為公用部份，並不附有業權份數。
- (二) 大廈公契訂定外牆附有業權份數，但說明是由發展商持有，至發展商將大廈所有其它單位及業權份數全部售出後而撤離時，將該外牆份數交給該大廈的業主立案法團(如已成立)或管業經理。此種安排其實是發展商或管業經理代所有業主持有該外牆的業權或管有權。亦等同外牆是大廈的公用部份。
- (三) 大廈公契的條文訂明發展商(包括其承讓人等)擁有外牆的業權份數，並且享有獨有專利

去使用，佔用及享用外牆。在此情況下，外牆並非公共部份。(看五)。

(四) 外牆並不附有業權份數，但是在公契條款訂明發展商(包括其承讓人等)保留外牆的獨有的管有權或使用、佔用或享有權。同時公契條文寫明發展商可以在外牆安裝、懸掛招牌、廣告及安裝煙囪或其它設施(只要此等設施符合法例)，但是因裝置此等招牌、廣告煙囪等設置如果損壞外牆，發展商有責任修理或維修因此而造成的損壞。

(五) 在上述第(三)及第(四)種情況下，有些公契條款寫明管業經理(如已成立業主立案法團則包括法團)有責任維修及保養該外牆。

以上第(三)(四)及(五)的情況，最富爭論，原因是其他業主覺得發展商或其承讓人有權利使用外牆而沒有義務，令業主覺得不公平。有鑑於此，建築物管理條例於1993年作出的各項修訂條款時，加入現時的34H條款。該條款複述如下：

### 34H 維持物業的職責

(1) 凡擁有建築物任何部份的人，或對建築物任何部份具有獨有管有權的人，或對部份具有獨有的使用，佔用或享用權的人(視何種情況而定)，雖則該建築物的公契並無對該人施加維持該部份修葺妥善及狀況良好的責任，該人亦須維持該部份修葺妥善及狀況良好。

(2) 第(1)款的責任，須當作為根據公契對建築物的所有業主負上的責任。

雖然加入了34H條款，但並不解決所有爭論及問題—究竟外牆是誰負責維修？

理由是每座大廈或每個屋苑的公契條文都有不同，而在公契條文的解釋亦各有不同，加以外牆的定義亦有問題，法庭的各個判例亦因公契條款不同，很難有統一的確實性(certainty)。在目前情況下可能出現以下的維修外牆責任問題：-

(a) 外牆是由擁有人(owner)負責維修；

(b) 對外牆具獨有管有權的人，或對該外牆具有獨有的使用，佔用或享用權的人(視何種情況而定)負責維修；

(c) 雖然在上述(a)或(b)的情況下，如公契有其它條款限制或改變了外牆的實質使用，例如上述第(四)及(五)項的情況，維修責任亦可能有所改變；

(d) 法庭有案例曾判定建築物管理條例第34H凌駕了有關公契的條文，從而令外牆的業主或獨有使用人要負責維修；

(e) 令問題更複雜的是外牆的定義不清晰，加以外牆在結構上是包括外牆表面(向外或向街)，裏面(單位的內牆身)及兩者中間的部份(可能有或沒有鋼筋)。如果外牆不是公共部份，那麼外牆的業主或管有人等的維修責任應去到怎樣的程度。

總而言之，決定外牆的維修責任，必須小心研究公契、建築物管理條例的相關條款及法庭的判例，因為如果有差異，會產生極大爭論，尤其因責任不同，令業主攤分維修款項出錯，導致訴訟。

最後建築物管理條例有關的條文是否可以作出適當修訂或政府對草擬公契條款作出更清晰的指引以避免或減少在這方面的爭論。

如各位有興趣可參考下述的法庭案例：Metro City Management Limited v Tsui Fee Hung(CACV 328/2005);麗苑業主立案法團對韓炳基(CACV1716/2001)；Uniland Investment Enterprises Limited and The Incorporated Owners of Sea View Estate(HCA 20920/1998);The Incorporated Owners of Hong Kong Industrial Complex case(HCA 2572/2005)；錦輝商業大廈業主立案法團案例(DCCJ541 及 543/2005)。

## Partnerships in Professional Housing Management Education

Dr. Ricky Yuen

### Introduction

Professional education and training that is aimed at producing competent practitioners must be based on a solid foundation of carefully developed and maintained partnerships among all stakeholders. Professional education is distinctly different from higher education primarily because of its dynamic relationship with the professions, and more importantly with employers, professional bodies and government. These relationships shape course structure, curriculum design and delivery, and most significantly the quality and availability of practice opportunities for learners in the profession. It has become crystal clear to educators that a competent professional cannot be born in the exclusive and highly protected environment of a classroom setting. Today, the range of stakeholders with vested interests in professional education has expanded, and the development, validation, and accreditation of professional programmes are subject to diverse and powerful influences. The uniqueness of professional education is that the curriculum addresses knowledge for and about practice, and is delivered in both the university context and in the field of professional practice.

Partnership has become something of buzzword in the world of professional education but its true meaning, usually some kind of collaboration, is often assumed rather than explored. The main 'partners' involved in this enterprise are the employers, the universities, the professional bodies, the students, and the service users. No contractual obligations exist between the partners; their relationship is more of a gathering together of people working towards a common goal. Exploring the reasons for the development of such partnerships in professional education sheds some light on their nature, and examples from one partnership in action illustrate some of the challenges inherent in them.

### Partnership Synergy

The discussions with various stakeholders in housing management education in Hong Kong have also established that classroom education alone does not make an expert in a professional discipline. It is evident that professional education is all about partnerships. The premise here is that the way to advance professional learning, to secure its future and to maximize its benefits, cannot be achieved without the creation and sustainability of a wide range of deep-rooted and reciprocal partnerships. Professional housing management education is different from many educational endeavours in that it cannot happen within the confines of a classroom. It must be grounded in a network of reciprocal partnerships. By necessity, housing management education involves educational institutions, corporate members and the professional community, along with governments of all levels. The way around the issue is to engage the students from inside the ivory tower of universities into the workplace and the community. What is needed instead is an engagement model in which course providers seek opportunities to partner with employers and professional bodies to meet collective needs. Organizations also need to see a clear self-interest in collective action to sustain their interest in both long and short terms. The partnerships should be a mutually beneficial and well defined relationship that includes a commitment to a jointly developed structure and shared responsibility; mutual authority, and accountability for success; and sharing not only the responsibilities but also the rewards. All individuals and institutions involved in the partnerships or collaborations learn about themselves and others in the process and are affected, or likely changed in the process. A successful collaborative process enables a group of people and organizations to combine their complementary knowledge, skills, and resources so they can accomplish more together than they can on their own.

This unique combining power of 'partnering synergy' creates something new and valuable, and enables partners to think and act in new ways that surpass the capacities of individual participants.

#### **Academic and Practical Collaboration**

Professional housing management courses in Hong Kong, as in other professional education programmes, are increasingly being marketised, competition between universities in the provision of professional courses has intensified. It is vital therefore that professional education is responsive to the needs of its stakeholders and is able to provide cost-effective education that meets both employment and academic demands. There are also sound educational reasons for the development of partnerships in professional education: a growing recognition of the importance of both academic and practical collaboration, and student and course collaboration. Although there is no clear evidence that the stakeholders have successfully involved themselves in the partnerships in terms of both breadth and depth to produce the desired learning results throughout the history of professional housing management education in Hong Kong, the course providers have increasingly worked in partnerships with employers and professional bodies who sponsor students or provide input in areas of curriculum design, student admission, practice placements, and practice teaching with them. The traditional position has been that the universities manage the courses, but where all the students are already housing practitioners in the industry, the role of employers in offering opportunities for practice is becoming more prominent. The courses, for example, the Professional Diploma in Housing Management (PDHM) offered by SPACE of the University of Hong Kong, has now developed to an extent where responsibility for the course is partly shared between university and industry, and where supervisors of the Professional Experience Requirements (PER) or their equivalents are seen as the mentors of the practice experience as well as contributors to university learning. As for full-time degree courses organized by both the City University of Hong Kong and the Hong Kong Polytechnic University, employers in the industry also offer internship positions for students to gain practical experience in the actual work environment to substantiate their academic learning.

Universities in Hong Kong have embraced this kind of partnership to a certain degree with its

growing emphasis on practice competence, and recognition that there are educational advantages in ensuring that academic study is grounded in the reality of practice rather than just practice is informed by academic study. With the recognition of the importance of student-centred learning and a desire to work in accordance with adult learning principles, the nature of partnerships between students and their course has become recognized as an important ingredient in a successful outcome. Teaching and learning strategies need to be collaborative, participative, and based on mutual respect and equality. This is also a natural outcome as students are sponsored by their employers to the course—there is a new 'value for money' relationship developing between them.

#### **The Professional Bodies**

Professional bodies such as CIH and HKIH that validate the housing management courses are increasingly defining competence standards for the practitioners and, to a greater extent, determining the length, mode of delivery, and content of similar professional courses. But they are no longer satisfied with merely observing, giving advice on the sideline, and tacit approval of all decisions while the university is doing all the important work. The daunting challenge for the course providers is try to ensure that every stakeholder has its chance to contribute and to feel that their contributions are both valid and valued.

The development of professional practice has been one specific arena of a developing partnership between professional education, employers, and the industry as a whole. Other aspects of such partnerships with particular implications for course design include the new approaches of course development, validation, accreditation, and review. The seeming shift in control away from course providers is part of the growing emphasis on professional competence and the importance of the practicum. Despite the willingness of many universities, employers, and professional bodies to enter into partnership, however, neither funding nor training is readily available to develop either the role of the practice teacher, project and PER supervisors within the practicum or the contribution of practicing professionals to a course as a whole. Similar points can be made about the resources and opportunities available to support contributions from universities towards the development of work-based programmes. Both the processes

and the outcomes of course design are thus based on considerable professional goodwill and commitment, which could be considered to be neither appropriate nor entirely secure.

### **The Learner-Centred Approach**

Students are becoming increasingly autonomous and responsible in relation to their own professional development towards competence. Learners as users of education services should be given the right to decide what they learn and how they learn. Course design now also demands an increasing partnership with the learners who may choose a range of options in relation to both programmes and modes of learning. This is particularly applicable where learners are already in-service housing management practitioners with considerable practical experience. With the recognition of the learner as increasingly self-reliant and autonomous, task or problem-centred rather than a subject-based mode of learning should be encouraged. By using the learner's experience as a resource, teachers should partner with learners to diagnose their learning needs and to design the curriculum. By adopting the experiential and enquiry-based methods of learning, a criterion-referenced approach to assessment is considered appropriate to determine students' professional competency. The introduction of optional modules in the curricula of housing management courses to suit the diversified interests and preferences of students can be regarded as a move in the right direction. To cater for the needs of students who are engaged in full-time employment, universities should consider offering distance learning mode, thus building in flexibility and freedom in the infrastructure of the course for the benefit of students who are under time constraints.

The purpose of this article is to encourage the development of strong, cohesive partnerships in professional education that yield substantial outcomes in terms of learning and empowerment for learners and professional practice. Past experience has demonstrated that professional housing management education can and should inspire and lead the partnership organizations to enter into broader partnerships to address the most serious issues facing both the property management industry and society at large. Multiple partnerships between universities, corporations, learners, and professional bodies serve as the foundation of high-quality professional learning.

### **Corporate Partnership**

More creative ways to involve corporate partners in professional learning are emerging. The traditional corporate business model that emphasized almost exclusive accountability to shareholders is giving way to a new sense of accountability to a broader definition of industry stakeholders. Although corporations are embracing a new sense of social responsibility based on a concern for the social infrastructure in which they operate, challenges still remain to building effective corporate-university-industry partnerships. These include significant differences in values, motives, organizational cultures, attitudes, and work styles. One of the most powerful concepts that organizations of all types are embracing is that of learning-centredness. When learning organizations join one another in mutually beneficial partnerships, entrepreneurialism, innovation, and creativity would emerge. This makes corporate involvement with higher education partners not only philanthropic and ethical decisions but also strategic ones. The many housing management courses in Hong Kong have been successful in a way that they receive popular support from the housing management industry in terms of their membership in the academic committees and examination boards, their recognition of the professional status of the graduates, sponsorship of their employees in taking the courses, and encouragement for its experienced managers to serve as project supervisors.

### **Benefits to Universities**

Universities have their weakness as a provider of professional education as they generally do not have the ability to link what is taught to practice. Even the education representatives of higher education recognize that universities are separate from professional work settings, and thus cannot reinforce what is taught, and nor are they able to understand the problems of professions, academically and from practice. This opens up a venue for collaboration and partnerships with experienced practitioners in the industry and professional bodies. It is desirable to establish a permanent coalition of universities, employers, and professional bodies to coordinate continuing professional education in housing management. This 'strategic council' for professional development is to coordinate the programmes offered by multiple stakeholders. This could ensure speedy development of life-long cooperation education by aggressively promoting and supporting collaborative efforts by the industry.

By allying with employers and professional bodies, universities can improve their access to potential students and more easily identify their learning needs.

Potential benefits for universities are also significant. As universities seek to become engaged with their partners for reasons of both altruism and self-interest, they are realizing more and more that involving corporate partners helps to reduce their own resources while increasing benefits to the professional community. Although academia might fear that corporate involvement can contaminate professional learning, creating reciprocal, democratic partnerships helps to avoid this unnecessary pitfall. There are also significant mutual benefits that contribute to a partnership between the industry and universities. First, for professional education, there is the benefit that the claim for a specialist knowledge base and establishing a degree entry route is validated by university recognition. Second, recruitment to professional education through the university system sustains the quality of the profession's intake. Universities in turn benefit by the presence of professional partners that support the institution's claim that they are preparing students for employment and career advancement. Professional education students also contribute to the expansion of student numbers and to the strength of those individual disciplines that contribute to professional teaching. Last, but by no mean least, students on professional courses generate a substantial income for universities.

### **A Win Win Situation**

Intentionally designed, actively pursued, and creatively sustained corporate-university-professional body partnerships for professional learning can lead partners away from passive, paternalistic ways of involvement to new value partnerships that constantly create possibilities for growth

for all participants and true mutual interest in each party's success. Such partnerships break down organizational barriers between sectors and help move partners towards professionally and academically responsible citizenship. As corporations and the professional community become more engaged, universities can continue to play a pivotal role in forging and sustaining authentic partnerships for the common good.

### **Conclusion**

It has become very clear that the partners are needed to be involved throughout the entire housing education programme. This calls for the establishment of a formal mechanism to systematically solicit the input of the various parties in order to build up a sustainable and effective partnering relationship. Integration or partnership in professional education where the different sectors can share power and deal on equal terms should be encouraged. It is a complex and intriguing notion that merits in-depth discussion in its own right. Course providers and professional educators will be stronger and less vulnerable to 'colonization' where other stakeholders invade or subordinate another if they collaborate and form alliances. Partnership collaboration can be viewed as value capture, where one organization takes resources from another, or value creation, where collaboration results in increased value produced. Our business is the education and training of housing professionals, and the ultimate challenge for course providers is to create value by developing the professional education to respond to the context and climate of change in society.

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