

LAW & PRACTICE

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FROM THE PRESIDENT | ON LEGAL EDUCATION: A VISION STATEMENT FOR THE FACULTY OF LAWS, UNIVERSITY OF MALTA | AL-SKEINI AND OTHERS V. THE UK - LC:NB, CONCURRING OPINION OF JUDGE BONELLO | EMIS - A SHIFT TO A LIGHTER REGULATORY REGIME | QUESTIONS RELATING TO RELOCATION

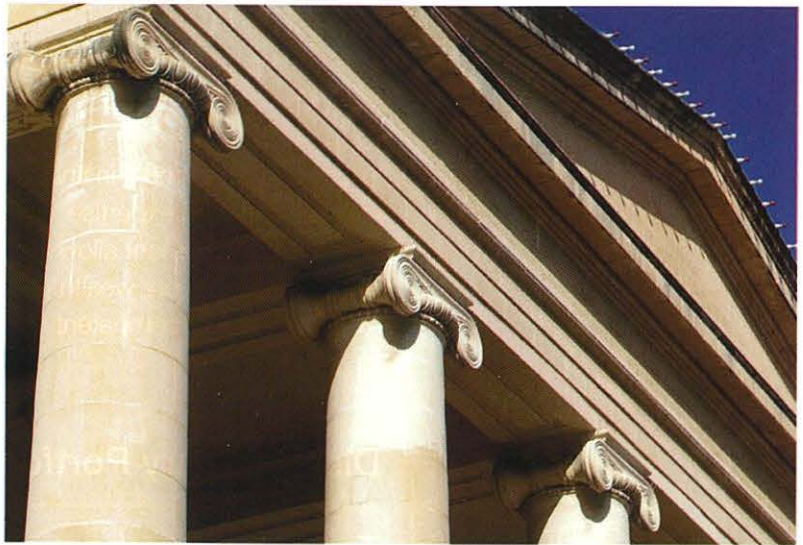


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On Legal Education: A Vision Statement for the Faculty of Laws, University of Malta

On 27 April 2011 I distributed to all academic members of staff who had the right to vote for the election of Dean of the Faculty of Laws, University of Malta, a Vision Statement for the said Faculty. I was, together with Professor Peter Xuereb, Head of the Department of European and Comparative Law, contesting for the 16 May 2011 election for the Deanship of the Faculty of Laws. I was elected Dean. Prior to the elections, I received valuable and thorough feedback from colleagues on this Statement which I reproduce below as originally drafted and communicated. I would like to express my gratitude for the feedback and support I received from all colleagues especially those who voted for me.



Vision Statement

To All Academic Members of Staff

Dear Colleagues,

Being a candidate for the election of Dean of the Faculty of Laws, I want to share with you a brief strategy for the smooth running of our Faculty, which promises to consolidate our achievements and ensure that our positive records grow steadily and consistently to reflect our good will, hard work, and serious commitment to being twenty-first century academic educators of our country's young generations.

I have reflected on the Faculty of Laws achievements so far and the goals and values which I think it should strive to consolidate and attain in the near future. Below I present in thematic fashion these goals and values which, in a nutshell, represent my vision for our Faculty's continuing development. As you will read in the following, I am proposing the management of our Faculty grounded on

a Deanship that is democratic, transparent, integrative, participatory, and inclusive; a Deanship which encourages a culture of dialogue and the empowerment of each and everyone of our dedicated staff.

The goals and values set out below range from consolidating past achievements; fostering subsidiarity, teamwork and participation in the decision making process; facilitating professional development of all our academic staff; ensuring continued integration of – and full participation by – our part-time academic colleagues; consolidating our Faculty's structure and encouraging stronger cooperation amongst us; working more closely with legal professional bodies and our very own student body; reforming the law course; and working for a greater degree of internationalisation of our Faculty; to administrative issues such as better planning of the Faculty's budget and adopting a four-year business plan; continuing to invest in our Faculty's library;

providing adequate office space and strengthening our Faculty's administrative office.

I believe these are essential objectives for ensuring a healthy growth of our Faculty. They are also concrete, practicable, and realistically implementable. I hope that with your support we will work closely together to advance the achievements of our Faculty and do so to the benefit of each and every one of us.

I. Consolidating Past Achievements

It benefits immensely our Faculty to consolidate all the past achievements and build on the excellent work carried out by Professor Ian Refalo as Dean and Dr Austin Bencini as Deputy Dean together with the Heads of Departments and Units, Faculty Board Members and academic staff. Ours is an old Faculty with high standing. It has contributed considerably to the development of Maltese society, has a well

versed and learned academic staff and our students obtain excellent results abroad both in Erasmus exchanges and post-graduate studies. The richness of our Faculty lies in the combination of academics and practitioners. The latter comprise members of the legal profession (advocates and notaries) some of whom, to the Faculty's benefit, occupy important offices in Malta thereby bringing a wealth of experience to the lecture room and legal research. I have here in mind current and past Presidents of Malta, Speakers, Ministers, Parliamentary Secretaries, Members of Parliament, Chief Justices, Judges, Magistrates, Attorneys General, Ombudsman, Chancellors, Vice-Chancellors, Chairmen of several public corporations, etc. When the Faculty calls upon all these holders of high legislative, executive and judicial office to serve it either as Lecturers and/or Examiners they all do so willingly, competently and altruistically. This is indeed our strength. We have a past and a present to be proud of, cherish and value. In addition, our non-academic staff provide us with efficient support services and are dedicated, reliable and hard working. Our Faculty – in the present time as well as in the future – stands to benefit from this solid foundation and we ought to strive to strengthen it.

2. Applying A Modern Style of Management: Subsidiarity, Teamwork and Participation in the Decision Making Process

In all top managerial positions I held before I rejoined the University of Malta on a full-time basis (Registrar and Director-General at the Courts of Justice, Chief Executive Officer at the Broadcasting Authority, Secretary of the Permanent Law Reform Commission) and in the adjudicative tribunals I have presided (Chairman of the Press Ethics Commission and Chairman of the Planning Appeals Board), I have always cherished the values of teamwork, inclusiveness and broad participation. It is therefore neither my intention nor my work style to put myself at centre stage and dictate from above how the Faculty should or ought to be run. A paternalistic style of leadership has never been a trait of my character; nor will it be now or in the future. I am a good listener and a good learner. Whoever has attended the meetings of the various Faculty Committees which I chair knows that I leave full space and liberty for everyone to express one's views. I do not impose my thoughts on others nor will I stifle initiative or attempt to dictate one's teaching and/or research activities. I respect diverse views and encourage a critical attitude. I promote proactively

agreement by consensus. This is my vision as to how decisions should be taken. I thus shy away from a managerial style which is centralised and suppresses participation, is undemocratic, demotivates colleagues and impedes empowerment of the academic staff. We do need a harmonious relationship within the Faculty, its academic and support staff, the student body, as well as with the legal professional bodies and the University structures. We should continue to work – as we have been successfully doing so far – with the view to delegating power to the base and continued implementation in our managerial style of the European Union's principle of subsidiarity.

As to my contribution to University life, with your support I will continue to represent successfully our Faculty on Senate and on its Programme Validation Committee where I will ensure that all Faculty Board decisions are well explained to these Committees and subsequently approved by them. I have chaired a Senate Sub-Committee, on boards of studies and revision of University assessment regulations and formed part of a Senate sub-committee on the updating of the Students' Charter. I also attend regularly the meetings of the University Discipline Committee and the Ph.D. Committee. In addition, I serve as chairman of the Faculty's LLD Dissertation Committee, Ph.D. Doctoral Committee, Disciplinary Committee, Strategic Plan Committee and Library Committee. All these Faculty Committees have enshrined – in a decentralised way – the principle of subsidiarity in our structures and have ensured that Faculty Board is granted the best advice from the most competent experts in the field. Engagement with these bodies has provided me with an in-depth insight in the workings of our Faculty and its integration within University structures, which constitute an added value for the accomplishment of the Dean's duties.

3. Professional Development of Academic Staff

Working to assist colleagues with their academic professional development will be a priority of my duties should you elect me as your Dean. I vouch that I will fully commit to:

- (a) foster collaboration amongst colleagues both in terms of consultation regarding teaching and research, as well as production of common projects – publications or otherwise;
- (b) formalise a mentoring system where the more senior academic members of staff support and assist junior colleagues;

- (c) encourage colleagues to participate more widely at international events – including conferences – with the view of networking and enhancing one's own reputation and the reputation of our Faculty internationally;
- (d) continue to act as a go-between the University administration and colleagues and help them out in their various enquiries to ensure that any compliant they have is resolved to their satisfaction;
- (e) support all colleagues in their efforts to bettering their position at University, discuss promotion matters with them and encourage their aspirations for academic achievements.

Given our human resources, our Faculty can become a hub of quality publications both nationally and internationally. I will be committed to facilitate and encourage more collaboration amongst our colleagues as well as developing new publication outlets.

4. Ensuring Continued Integration of Part-Time Academic Members of Staff

Facilitating synergy between full-time and part-time academic members of staff is crucial to ensure the smooth running of our operations. I firmly believe that we should continue to promote integrative work and sustained collaboration between our full-time and part-time colleagues. In the spirit of collegiality, I think that the Dean should be chosen from amongst our full-time academic staff, given that his presence in the day-to-day running of the Faculty is required on a continuous basis, and that the Deputy Dean should be chosen from amongst our part-time academic staff. This will ensure fair representation of all our academic staff at Faculty's top managerial level. This will also be conducive to a healthy work ethos amongst our community. Both the Dean and the Deputy Dean should sit on Senate, the University's highest academic body. Moreover, we should continue with our good tradition of fair representation of our part-time colleagues in all Faculty committees.

5. Consolidating Faculty Structures

The Faculty has to reflect and be receptive to developments taking place in society and in the realm of the law. For this purpose I propose the setting up of:

- (a) a Human Rights Unit within Faculty to co-ordinate the teaching of all human rights study-units and the carrying out of research in this area. This Unit will

be responsible also for re-assessing and updating from time to time the Master of Arts in Human Rights and Democratisation degree course. It will also be responsible for the publication of the Mediterranean Journal of Human Rights;

- (b) a Medicines and the Law Unit to take within its fold teaching and research on medicine related subjects such as medical law, health care legislation, biolaw, forensic medicine, etc.;
- (c) a Comparative Law Unit to develop the teaching and research in Comparative Law. Unfortunately, so far, this subject has not been given the due importance that it deserves and, hence, we need to address this matter the earlier the better.

Moreover, the Legal History and Methodology Unit should co-ordinate and develop study-units on history of legislation and legal historiography, social science subjects related to law, research methods and legal writing skills. The Unit should also be upgraded as soon as possible to a fully-fledged Department.

Should I be elected Dean I will be committed to encourage inter-departmental collaboration with the view of avoiding overlaps, and encouraging cooperation in cross-disciplinary teaching and research in areas of common interest. The Faculty should also foster inter-Faculty and inter-Institute co-operation at University level. In addition, I will work with colleagues to introduce new study-units to ensure that emerging legal subjects are addressed and that the syllabus is regularly kept updated. Moreover, I will hold regular meetings with heads of Department and Units to ensure that they have a direct line of communication with the Dean and Deputy Dean, to brief them of latest developments, to discuss the Faculty's evolving strategy and to receive feedback/suggestions therefrom.

Various departments within our Faculty organise their own conferences. This initiative is laudable and will continue to be encouraged. But we should also think strategically and hold an annual Faculty conference or workshop to discuss, under the guidance of Faculty Board, faculty-wide issues, academic matters which are of an inter-departmental nature and revisit our business plan to make the Faculty more efficient and effective.

6. Collaborating with Legal Professional Bodies

The Faculty benefits from developing closer links with the Chamber of Advocates,

the Chamber of Legal Procurators and the Notarial Council. I have already been involved in a number of meetings with the Chamber of Advocates which I am committed to continue. I will also meet the Chamber of Legal Procurators and the Notarial Council. In a collaborative spirit amongst ourselves – both full-time and part-time academic staff – we can strengthen our ties with our colleagues practicing a legal profession at the national level. In concrete, I suggest that a Committee be established with representatives from these entities to ensure better cooperation between the Faculty and legal professional bodies. The Faculty should not risk being isolated from the legal professional chambers. On the contrary, it should engage constructively with them.

The Rector agreed to a proposal of mine that the two rooms which currently house the Faculty Law Library be transformed into a hall for moot courts. I will propose to the Faculty Board how to develop further my initiative in this regard by bringing on board incumbent and retired Judges and Magistrates (who possess a wealth of experience) and practising lawyers to preside these moot court sittings. I will contact the Chambers of Advocates and Legal Procurators to ask them to be involved in this process. I will also discuss with these chambers how the Faculty can assist in the better organisation of professional practice.

In addition, as I have done last year when Austrian Judges visited our Faculty, we should continue to work with the Judicial Studies Committee to explore possibilities of co-operation with this Committee to our mutual benefit.

7. Adopting Closer Ties with our Client Base – the Student Body

Our Faculty can benefit from contacts with the Għaqda Studenti tal-Ligi and the European Law Students Association (Malta). Through these bodies as well as the student members on the Faculty Boards and student representatives, we can understand better their needs and address them accordingly. A student representative should sit on all Committees appointed by the Faculty Board (except, for obvious reasons, Boards of Examiners). We also need to refine our student mentoring system. I will meet with our colleagues involved in student mentoring and with student representatives to hear their views as how mentoring can be improved. In addition, we need to conclude the discussion on the Għaqda Studenti tal-

Ligi's 5 October 2010 Law Course Reform Report. There are valid ideas therein which we can embrace as a Faculty. Such an effort at providing feedback to Faculty on law reform by our students should be promoted.

The Faculty should also introduce a Dean's Awards. This will be in line with other Faculties at University which offer Awards to the most meritorious students.

Furthermore, we should expand and diversify our evening courses. With the recent launching of two evening courses in February 2011, the Faculty has rendered itself more relevant to our society. Moreover, the student body has been increased by 52 in the case of the Diploma in the Laws of Procedure and by 11 in the Post-Graduate Diploma in Mediation.

I will work to devise a strategy to attract more Maltese and foreign legal professionals to further their studies at Ph.D. level at our Faculty as the current number of Ph.D. candidates is limited.

8. Reforming the Law Course (LL.B./LL.D.)

Our Faculty already offers a wide range of study units in diverse areas of the law. But I agree with colleagues that the Law Course needs reform. In particular, the following factors should be addressed in such reform:

- (a) the Faculty Board's decision to reduce the LL.D. course to two years from the current three to bring it in line with the Bologna process should be given full effect. Government and University are bound to comply with the 3 + 2 formula (3 years for the LL.B. course and 2 years for the LL.D. course);
- (b) the LL.B. entry requirements need revisiting. The Faculty has already begun discussions with the Chamber of Advocates on this point and we are moving in the right direction. Various options have been discussed as to how the entry requirements could be tightened up. These vary from introducing an Advanced and/or Intermediate certificate in Laws as a pre-requisite entry requirement; raising the grades for entry into the LL.B. degree; and/or emphasising languages for entry purposes;
- (c) the Diploma of Notary Public should be done away with and Notaries and Advocates should all be awarded an LL.D. degree. In other courses at University a student who reads for a three (let alone four) year course obtains a Bachelor's degree with

Honours not a Diploma as Notaries do. This existing anomaly at our Faculty needs to be rectified;

- (d) regulations must be written in such a manner to allow students to benefit from Erasmus exchanges and stagiaires abroad. More agreements with foreign universities, not only British but also from the European mainland, should be concluded to enable our students to visit and study there. Ours is a mixed legal system and therefore we should look at both civil and common law jurisdictions for learning opportunities.

9. Developing New Courses

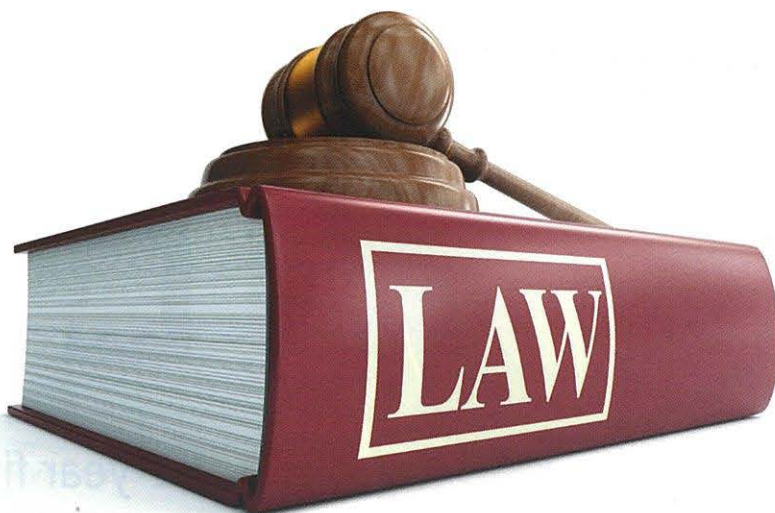
As noted above, I have been instrumental in developing two evening courses: (a) the Diploma in the Laws of Procedure; and (b) the Post-Graduate Diploma in Mediation. These are fee paying courses and will bring in money directly to the Faculty's budget. I will be proposing to Faculty Board the upgrading of the Post-Graduate Diploma in Mediation to a Master's course whilst new undergraduate diplomas in other areas of the law (such as in Criminal Law and Environmental Law) will be proposed to continue to disseminate legal knowledge amongst the general public once there is a demand for legal education after normal working hours. This student cohort should be tapped and their legal education needs addressed and satisfied. Moreover, it will be beneficial to develop a post-graduate course in ICT Law as well.

Academic members of staff will be encouraged to produce new teaching materials (with particular reference to Maltese Law) within a Faculty Book Series. I propose to establish an Editorial Board for this purpose.

The Faculty should explore the possibility of organising a course at the Gozo Campus of the University of Malta. We did receive a request to this effect and need to act on it.

10. Servicing Other Faculties and Institutes

Our Faculty should take the lead to provide legal study-units to other Faculties and Institutes. For instance, the newly created Department of Environmental and Resources Law has a seminal role in exporting legal knowledge to other Faculties and Institutes. All departments and units need to be involved in this process to ensure quality teaching of legal content outside our Faculty. Law is a subject relevant to other academic disciplines taught at University and hence we need to popularise it more thoroughly through inter-faculty and inter-institute co-operation.



11. Internationalising the Faculty of Laws

I believe that internationalisation of our Faculty is an issue of utmost importance. Recently I have been instrumental to bringing over to the Faculty – at no cost – various local and international academics and practitioners to deliver lectures ranging from a Judge of the German Constitutional Court (Judge Professor Wolfgang Hoffmann-Riem), a Judge on the European Court of Human Rights (Judge Giovanni Bonello), an American Ambassador to Malta (Professor Douglas Kmiec) to an American Professor (Professor Ferdinand N. Dutilleul, Law School University of Notre Dame, Indiana, U.S.A.) to lecture on Criminal Law. I have linked up via video conferencing with American Professor Douglass Cassel (Director of the Center for Civil and Human Rights at Notre Dame Law School) to deliver a lecture on American Human Rights Law. I have also hosted the Dean of the Faculty of Laws at the University of Oxford Professor Timothy Endicott and am working to get the services of a Fulbright Scholar via the American Embassy and a Professor from China via the Confucius Institute. With your support, I will facilitate the organisation of international conferences in Malta with a view of boosting the international reputation of our Faculty.

Moreover, in order to ensure a greater degree of internationalisation of our Faculty we should work in parallel on several plans:

Aligning the Faculty with Foreign Law Faculties

The M.A. in Human Rights and Democratisation degree course has seen our students benefitting from the rich

expertise of foreign lecturers who, together with our academic staff, have enriched the teaching output. We need to strengthen the involvement of foreign lecturers for all our courses. We also stand to benefit from encouraging our Faculty members to go overseas to lecture at foreign Universities.

Participating in International Masters' Programmes

The University runs joint/dual masters' degrees with other universities. No such programmes exist in our Faculty. We should participate in International Masters' Programmes to offer some of our masters' degree courses in conjunction with foreign universities. This will enhance the Faculty's international reputation.

Diversifying Faculty Publications

We should work more to encourage and increase publications by our staff internationally both in terms of articles appearing in international peer reviewed journals and monographs published abroad. In addition, the Faculty of Laws has its own publication, the Mediterranean Journal of Human Rights. We need to strengthen this publication by ensuring that it gets a wider subscription base than it already has.

Getting High-Profile Visiting Speakers

We should tap the resources which exist in Malta to continue to host at our Faculty high profile visiting speakers through our contacts in the diplomatic missions accredited to Malta, foreign universities with which the University of Malta has collaborating agreements (such as the Confucius Institute), foreign Universities with which we are in contact and the University's own scheme for bringing over visiting lecturers to our Faculty.

12. Addressing Financial Management Issues

As you are aware, until recently, the budget of the Faculty of Laws had remained static for several years. Under the Dean's guidance, last year I was instrumental in doubling the Faculty's budget. Through my efforts, I brought about a substantial increase, inter alia, in the budget of the Department of European and Comparative Law and the Department of Public Law to the current 5,000 euro each; a new budget has been allocated to the Department of Media, Communications and Technology Law; the budget of the Faculty Office has been trebled and for the first time a budget was obtained for the two new Units within our Faculty: the then Environmental and Planning Unit (now Department of Environmental and Resources Law) and the Legal History and Methodology Unit.

Forward planning requires the adoption of a four-year business plan. This will give the necessary direction to the Faculty, establish its priorities and goals and ensure that targets set are achieved within the stipulated time. The Faculty's Strategic Plan Committee which I chair has addressed various strategic matters in its operation and suggested to Faculty Board the adoption of various decisions. We will need, from time to time, to update and refine this strategy and ensure full implementation of all actions mentioned therein.

We also need to tap on external resources such as European Union funding programmes and other research funding sources such as the local commercial community, and governmental and non-governmental bodies, for instance, the German Academic Exchange Service, the Leverhulme Trust and the Fulbright Scholar Award.

13. Continuing to Invest in the Faculty of Laws Library and Legal Databases

Professor Ian Refalo has done a magnificent job by establishing the Faculty of Laws Library. It is and will remain his foremost legacy to the Faculty. Last year I obtained a 2,000 euro budget from the Rector for the Law Library and this year I have worked to see the Law Library being granted adequate space in the additional floor being built to house the current collection and to develop it further through the double space that we have been allotted. I have already secured a donation of several periodicals and books running into hundreds which will be available to both academic staff and students when the

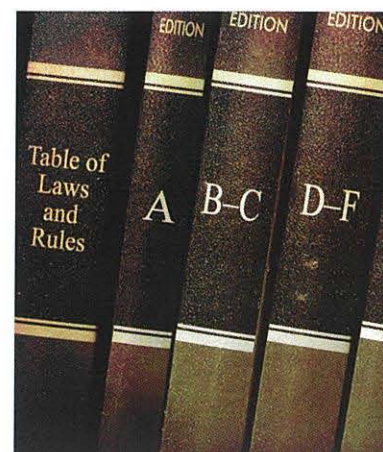
Faculty Law Library becomes operational in its new premises. As Chairman of the Faculty's Library Committee, I am committed to retain the good status of our Faculty's Library and to further enhance the quality of our collection.

The Faculty will benefit from developing a Collective Legal Memory Database. Our Faculty Law Library enjoys the richness of several notes written by eminent jurists. Those notes and other classic publications by legal scholars available at the Melitensia section of the University Library should be scanned and made available to all academic members and students in full observance of applicable copyright laws.

I have advised the University Library on the subscription to new legal databases. We now enjoy the benefit to carrying out research in JSTOR, De Jure, Lexis Nexis (UK) and Lexis Nexis French (Juris Classeur) in addition to electronic subscription to new legal journals which were added to the previously obtaining legal databases. I coordinated the organisation of training courses both for academic staff and students in order to bring these databases to their attention and encourage the constant use of such databases. The University Library website has also links to several Law Commissions and Institutes which I compiled for use by our academics and students.

14. Providing Adequate Office Space for Academic and Support Staff

During the last Faculty Board meeting I raised the issue of the lack of adequate office space. The Faculty Board has supported me and I have written to the Rector on this matter. I will be working on the issue of lack of space to ensure that more office space is made available to the Faculty so that it can continue to accommodate the requirements of full-time academic staff, part-time academic staff, and Faculty Office staff. In the meantime the new floor will house a board room as well as a number of offices for use by our academic staff. I am currently working on the creation of new office space for the Faculty's store, partitioning the current store to use it in part as an office and carrying out alterations to the Faculty Office to make it possible to host new support staff. The new floor which is currently being constructed will also have a common room. It will provide computer and printing facilities as well as storage space for part-time colleagues.



15. Strengthening of the Faculty Office

We all stand to benefit from strengthening the current workforce in the Faculty Office in order to be able to cope with the increase in full-time and part-time academic staff, departments and units and new courses. As the size of our faculty – and the amount of our work – increases we need highly professional support services. I will propose to the University Administration that a system of departmental secretaries be established within the Faculty Office in addition to current support staff.

In sum

My vision for our Faculty promotes consolidation of the meritorious achievements of the past whilst building upon them to ensure further sustained progress. I believe that working in unison and with professional commitment we will extend our Faculty's sound legacy into the twenty-first century and continue to be usefully dedicated to our country's young generations as well as to our society at large.

By implementing the strategy outlined in the above themes we can succeed together to fulfil our mission to: offer new degree/diploma courses and innovative study-units, develop further our teaching materials, enhance academic expertise, diversify our publications, facilitate continued professional development, establish new collaborations with legal professional bodies, internationalise our Faculty and, all in all, provide a better product to the student body whom we are dedicated to serve.

I hope to obtain your support in order to see our Faculty accomplish these objectives in the years to come to the benefit of our Faculty and students body alike.