



THE

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OF HONG KONG

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22 December 2003

Mrs Percy Ma  
Clerk to Subcommittee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

**Via Fax – 2509 9055  
& Via Post**

Dear Mrs Ma,

**Re : Subcommittee on Summary Disposal of Complaints (Solicitors) Rules**

Thank you for your letter dated 12 December 2003.

I set out below the Society's views on the issues raised by the Subcommittee at our meeting on 8 December 2003:

**1. Objectives of introducing the summary disposal procedure**

Under the Legal Practitioners Ordinance, the role of the Council is merely that of the prosecuting authority before the Solicitors Disciplinary Tribunal and it has no power to admonish or censure solicitors. In practice, in cases which are not referred to the Tribunal Convenor under section 9A of the Ordinance, the Standing Committee on Compliance issues letters of regret or disapproval in which it is made clear to the solicitor that "this does not amount to a censure". These letters do not form part of the solicitor's disciplinary record and inevitably are frequently ignored by the recipients as they do not operate as an effective disciplinary sanction. On the other hand, the appointment of a Tribunal is an expensive and time-consuming process and the costs and time involved will in some cases be disproportionate to the alleged breaches.

The objective of introducing the summary disposal procedure of dealing with certain complaints summarily by way of a fixed penalty is to fill the gap between the issue of letters of regret or disapproval and the referral of matters to the Solicitors Disciplinary Tribunal so that there is a system to deal with those breaches that are not

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considered appropriate for referral to a full hearing by the Tribunal but because of costs and expediency considerations, the summary disposal procedure will be preferred.

**2. Criteria for determining whether a matter was suitable for summary disposal by the Tribunal Convenor**

The types of offences that are suitable for summary disposal by the Tribunal Convenor are intended to be those of a regulatory nature not involving dishonesty, but deserving of sanction.

A breach of a scheduled item under the Summary Disposal Rules is not automatically disposed of under the summary disposal procedures. Section 9A(1B) of the Ordinance sets out the matters that the Council may take into account in considering whether a matter is suitable for summary disposal:

- (a) whether the alleged breach is deliberate;
- (b) whether the alleged breach has been committed with a dishonest intent;
- (c) the gravity of the alleged breach; and
- (d) any other relevant factor.

The Council will give careful consideration to all relevant factors in deciding whether the matter should be submitted to the Tribunal Convenor.

**3. Seek the views of the Bar Association on inclusion of breaches of rules 5D(e) and 5D(f) of Solicitors' Practice Rules**

Rules 5D(e) and 5D(f) of the Solicitors' Practice Rules deal with the requirement on a solicitors' firm to deliver a backsheet containing specified information to counsel within a certain time limit and to pay counsel by the firm's cheque after the receipt of a fee note.

Inclusion of breaches of rules 5D(e) and (f) as scheduled items under the Summary Disposal Rules does not mean that all breaches under the two rules will automatically be disposed of under the summary disposal procedure. The Council will take into account all relevant factors of the case when deciding whether the matter is suitable for disposal under the Summary Disposal Rules.

Nevertheless, the inclusion of such breaches as scheduled items under the Summary Disposal Rules allows the straightforward cases not involving dishonesty to be dealt with expeditiously. For example, owing to a genuine oversight, the backsheet delivered to the counsel has omitted the name of the solicitor in charge, in breach of rule 5D(e). Such cases, which deserve of sanction but which are however not appropriate for referral to the Tribunal for a full hearing, will be suitable for disposal under the Summary Disposal Rules.

It is not necessary to seek the views of the Bar Association.

**4. The reference to the relevant person not agreeing to discuss with the Council representative was absent in section 4(2)(a)(ii)**

Section 9(2) of the Summary Disposal Rules provides that in any case other than that set out in section 9(1), the Solicitors Disciplinary Tribunal Proceedings Rules apply.

If the relevant person does not agree to discuss with the Council representative, it follows that the Solicitors Disciplinary Tribunal Proceedings Rules will apply.

The intention of section 4(2)(a) is to provide for the main content of the notice which is to set out the consequence of admission and non-admission of liability. It is not intended to repeat, under section 4(2)(a), the procedures provided in the other sections of the Summary Disposal Rules.

However, for the sake of clarity, the following provision is proposed to be added as the new section 4(2)(c):

“(c) ~~states that if the relevant person fails to discuss with the Council representative any of the matters in the notice, the matter shall be disposed of in the manner provided in the Summary Disposal Rules subject to the Council’s power to direct otherwise.~~

Consequential clerical amendments will have to be made to sections 4(2)(a)(ii) and 4(2)(b) following the addition of the new section 4(2)(c), namely, the word “and” at the end of section 4(2)(a)(ii) will be deleted and the full-stop at the end of section 4(2)(b) will be replaced by “; and”.

To further assist the relevant person, the Society proposes to attach to the notice a copy of each of the Summary Disposal Rules and the Solicitors Disciplinary Tribunal Proceedings Rules.

**5. State the timeframe for the different steps under the summary disposal procedure in the notice which accompanied the complaint sheet**

A procedural chart can be prepared and attached to the notice accompanying the complaint sheet for the benefit of the relevant person.

**6. Consider extending the time limits specified in sections 4(2)(b), 6 and 8 when circumstances warranted**

Allowing extensions of time is not considered appropriate. The present summary disposal procedure provides certainty in the timeframe and avoids any possibility of the case being dragged on indefinitely, thus defeating the intended expedited nature of the system.

**7. Introduce provisions to limit the power of the Council to revoke its decision under section 5**

The Council does not intend that it can revoke its decision to submit the matter to the Tribunal Convenor for summary disposal once the relevant person has notified it of his decision to enter into discussion with the Council representative. In fact, the 21-day period to discuss with the relevant person starts on the day after the receipt of notice by the Council representative.

For the sake of clarity, section 5(1) is proposed to be amended as follows to make it clear that the power of the Council to revoke its decision is restricted to the period prior to the receipt of notification by the relevant person under section 4(2)(b):

*“(b) Notwithstanding the sending of a complaint sheet to a relevant person under section 4, the Council may at any time within 21 days thereafter ~~receipt by the Council representative of notification from the relevant person as to whether he wishes to discuss the matter with the Council representative~~ revoke its decision to submit the matter to the Tribunal Convenor under section 9A(1A) of the Ordinance.”*

**8. Introduce provisions to allow the relevant person to elect not to go through the process of discussion**

As provided under section 6, the 21-day period for discussion will start from the day after the receipt of the notification by the Council representative to discuss and agree is writing the facts of the case. The timing is within the control of the parties themselves and the stated 21-day period is only the maximum period allowed.

The relevant person, if he so wishes, can notify the Council representative his wish to discuss on the first day he receives the complaint sheet and the summary of facts. Then on the second day, the 21-day period for discussion already starts running.

It is not considered appropriate to allow the relevant person to elect not to go through the process of discussion with the Council representative. The confirmation of the accuracy of the information contained in the complaint sheet and summary of facts requires exchange of correspondence between the relevant person and the Council representative and the exchange is already a form of discussion.

Further, the process of discussion is important. Although it is a summary disposal, it is nevertheless a disciplinary procedure, which should not be rushed. A procedure which is rushed may not impress upon the relevant person the gravity of the matter. The relevant person should be given reasonable time to consider the facts of the complaint against him and to ensure that they are accurate.

**9. Reason for not providing circumstances whereby a relevant person could revoke his decision**

The relevant person is given reasonable time to consider each step of the summary disposal procedure before proceeding to the next. Further, he is not bound to have the matter submitted to the Tribunal Convenor under the summary disposal route unless and until after discussion with the Council representative, he admits liability, agrees to summary disposal of the matter and signs and returns the statement of the agreed facts. The procedure is not forced upon him and it is entirely voluntary. He can choose not to continue with the procedure at any time before he signs and returns the statement of agreed facts.

It is therefore considered not necessary to provide for any circumstances whereby a relevant person could revoke his decision. Further, it will unnecessarily cause confusion and delay the process if the relevant person is allowed to switch decisions as each step that follows in the procedure is triggered by the notification of the relevant person's decision to the Council.

Please note that the following representatives from the Law Society will attend the next meeting of the Subcommittee on 5 January 2004:

**Mr Anson K.C. Kan**  
簡錦材先生

**Vice President**  
香港律師會理事會副會長

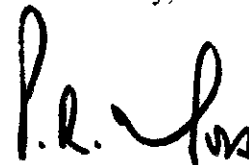
**Mr Patrick Moss**  
穆士賢先生

**Secretary General**  
秘書長

**Ms Heidi Chu**  
朱潔冰小姐

**Director of Standards and Development**  
專業水準及發展部總監

Yours sincerely,



**PATRICK MOSS**  
Secretary General

c.c. Mr Michael Scott, SASG, Department of Justice (Fax – 2180 9928)