

HONG KONG BAR ASSOCIATION

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Clerk to the Bills Committee,
Legislative Council
Legislative Council Building
8 Jackson Road
Central Hong Kong

Bills Committee on Financial Reporting Council Bill

Invitation for Submissions

Thank you for your letter dated 26 July 2005 addressed to Ms Mendy Chong, Administrator of the Hong Kong Bar Association.

In very basic outline, where a complaint is received by the Bar Council about the conduct of a barrister, the Bar Council investigate the complaint. Invariably, this is done through the Special Committee on Discipline which has been established by the Bar Council. The committee investigates the complaint. It then reports to the Bar Council. The Bar Council then determines whether there is substance in the complaint.

If the Bar Council considers that there is no substance in the complaint then the matter is not taken further. In that event, a complainant has the right to take the complaint to the Chief Judge of the High Court who has the power to order that the matter go before a Barristers Disciplinary Tribunal.

If the Bar Council considers that there is substance in the complaint, then a decision is made as to whether to refer the matter to a Barristers Disciplinary Tribunal. The Bar Council does have power in a suitable case to require the barrister the subject of the complaint to be admonished by the Chairman of the Bar. While it would not be correct to characterise the cases that are dealt with in this manner as trivial, generally it would be right to say that they are in the less serious category.

Where the matter is sufficiently serious, the matter is referred to a Barristers Disciplinary Tribunal under the Legal Practitioners Ordinance. Although the Bar Council would then appoint a barrister as prosecutor and instruct solicitors to assist the barrister in that regard, and although the material gathered by the Special Committee on Discipline is almost always used before the Tribunal, the Tribunal does have power and, from time to time, exercises the power to investigate the matter further. However, generally the primary work of investigation is done by the Special Committee on Discipline. In that sense, although there is some scope for overlap in the investigatory process, generally, indeed almost always, the investigatory and sanctioning components of the disciplinary process are quite separate. It has certainly been my experience (I am the chairman of the Special Committee on Discipline) that no problems have been created in the context of disciplinary proceedings against barristers by reason of the separation of the investigatory and sanctioning components of the disciplinary process.

If the allegations against the barrister the subject of complaint are found to be proved before the Tribunal then the barrister may be sanctioned.

I hope that the foregoing is of assistance to the Bills Committee.

Apart from the foregoing, the Bar Association has no comments to make on the proposed structure of the disciplinary process for auditors contemplated in the Bill the subject of the Committee's deliberations. The Bar is not wish to be represented before the Committee.

Yours faithfully,

(Andrew Bruce, SC)
Acting Chairman