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Paper for the House Committee meeting on 9 January 2004

**Report of the Subcommittee on
Summary Disposal of Complaints (Solicitors) Rules**

Purpose

This paper reports on the deliberation of the Subcommittee on Summary Disposal of Complaints (Solicitors) Rules.

Summary Disposal of Complaints (Solicitors) Rules

2. The Rules are made by the Council of The Law Society of Hong Kong (the Council) under section 73 of the Legal Practitioners Ordinance (Cap. 159) (LPO) with the prior approval of the Chief Justice.
3. The object of the Rules is to provide for the practice and procedure to be followed in connection with the disposal of a complaint against a solicitor, a foreign lawyer, a trainee solicitor, or an employee of a solicitor or a foreign lawyer (a relevant person) by the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel (the Tribunal Convenor) under section 9AB of LPO. The complaint must relate to an offence which is listed in the Schedule to the Rules. Section 9AB of LPO establishes an alternative disciplinary system under which a fixed penalty will be imposed upon a relevant person who pleads guilty to certain disciplinary offences, without the necessity to proceed to a full hearing of the Solicitors Disciplinary Tribunal (SDT).
4. The Rules will come into operation on the day appointed for the commencement of section 111 of the Statute Law (Miscellaneous Provisions) Ordinance 2002. The provision relates to the addition of new section 73(1)(caa) and (cab) to LPO which empowers the Council to make rules providing for the practice and procedure to be followed in connection with the submission and disposal of a matter by the Tribunal Convenor under LPO.

The Subcommittee

5. At the House Committee meeting on 29 November 2003, Members agreed to form a subcommittee to study the Rules. The membership list of the Subcommittee is in **Appendix I**. Under the chairmanship of Hon Margaret NG, the Subcommittee has held two meetings with representatives of The Law Society of Hong Kong (the Law Society) and the Administration.

Deliberation of the Subcommittee

Submission of matter to and disposal of matter by Tribunal Convenor

6. The Law Society has explained that the relevant person has a maximum of 56 days to admit liability for the alleged breach and agree to the matter being disposed of by the Tribunal Convenor. The different steps involved in the summary disposal procedure are as follows -

- (a) if the Council decides to submit a matter regarding the conduct of a relevant person to the Tribunal Convenor, the solicitor or counsel appointed by the Council (the Council representative) shall send to the relevant person a complaint sheet stating the particulars of the complaint, a summary of facts relating to the conduct being complained of, as well as a notice explaining consequences of admission/non-admission and the amounts of the fixed penalty and fixed investigation cost if the matter is to be disposed of under the summary disposal procedure (section 4);
- (b) the relevant person is required to notify the Council representative in writing within 21 days after receiving the complaint sheet whether or not he wishes to discuss the matter with the Council representative (section 4);
- (c) if the relevant person notifies the Council representative that he wishes to discuss the matter, he will have a period of 21 days beginning on the day after the receipt of the notification by the Council representative to discuss and agree in writing the facts of the case (section 6);
- (d) the Council representative will prepare and sign a statement of agreed facts on behalf of the Council and send it to the relevant person (section 7);
- (e) the relevant person shall, within 14 days after receiving the statement of agreed facts, sign and return it together with his indication in writing that he admits liability for the alleged breach and agrees to have the matter disposed of under the summary procedure (section 8);

- (f) the Council will then make a submission to the Tribunal Convenor stating that the conditions to have the matter disposed of under the summary procedures have been satisfied. It will also submit an affidavit exhibiting the signed statement of agreed facts (section 10); and
- (g) after receiving the submission, the Tribunal Convenor shall make an order and send it to the relevant person within 7 days of its making (section 11).

7. The Law Society has further explained that if the relevant person does not admit liability for the alleged breach or does not agree to the matter being disposed of by the Tribunal Convenor, the matter shall be disposed of by SDT in accordance with the Solicitors Disciplinary Tribunal Proceedings Rules (Cap. 159 sub. leg). A copy of the "Procedural Chart on Summary Disposal" provided by the Law Society is in **Appendix II**.

Objective of the Rules and criteria for disposal of matter by Tribunal Convenor

8. Hon Miriam LAU has expressed the view that the Council should not be "over-vigilant" in considering whether certain complaints against solicitors should be disposed of under the summary disposal procedure. It should refrain from resorting to the summary disposal procedure to deal with minor offences which are more appropriate to be disposed of by a letter of regret or disapproval issued by the Council. The Council must satisfy itself that the matters submitted for disposal by the Tribunal Convenor are matters which, but for the summary disposal procedure, would have been the subject of a full hearing of SDT.

9. Hon Margaret NG has pointed out that some of the offences listed in the Rules do not appear to be minor offences, for example, breaches of Rules 4B(2), 4B(4), 5D(c), 5D(d), 5D(e) and 5D(f) of the Solicitors' Practice Rules, and Practice Direction B1 of the Practice Directions 1990 issued by the Law Society. She has expressed concern that offences of considerable seriousness could be brought within the ambit of the summary disposal procedure.

10. The Law Society has explained that under LPO, the role of the Council is merely that of the prosecuting authority before SDT and it has no power to admonish or censure solicitors. While letters of regret or disapproval could be issued to solicitors, it is made clear to the solicitors that the letters do not amount to censure. As the letters do not form part of the solicitor's disciplinary record, they could hardly be regarded as having deterrent effect. On the other hand, the appointment of SDT is an expensive and time-consuming process and the costs and time involved in some cases are disproportionate to the alleged breaches. The objective of introducing the summary disposal procedure is to deal with those breaches that are considered appropriate for referral to a full hearing of SDT but because of costs and expediency considerations, the summary disposal procedure will be preferred.

11. A list of the offences that may be dealt with under the summary disposal procedure is set out in the Schedule to the Rules. The Law Society has provided a list explaining the nature of each of the offences (**Appendix III**). According to the Law Society, 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 sanction. However, a breach of an offence specified under the Rules is not automatically disposed of under the summary disposal procedure. In considering whether an alleged breach is suitable for disposal under the summary procedure, the Council may take into account the following matters (section 9A(1A) and (1B) of LPO refers) -

- (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 factors.

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

12. In response to the request of the Subcommittee, the Law Society has confirmed the following in writing -

- (a) the objective of introducing the Rules is to provide an alternative procedure to that of a full hearing of SDT which will be more expeditious and more cost effective;
- (b) the Law Society's policy in determining whether a complaint is appropriate for disposal under the summary procedure will be that the complaint is of sufficient gravity in all the circumstances to warrant a submission to a full hearing of SDT; and
- (c) the present practice to dispose of trivial breaches by way of issue of letters of regret or disapproval will continue and that the summary disposal procedure will not be invoked for such cases.

Content of the notice sent by the Council representative

13. Hon Audrey EU has pointed out that according to the "Procedural Chart on Summary Disposal" (Appendix II), if the relevant person does not agree to discuss with the Council representative, the matter will be disposed of by SDT. However, this essential information is absent in the notice issued to the relevant person (section 4(2)(a)(ii) refers). Hon Miriam LAU considers that the notice should also state the timeframe for the different steps under the summary disposal procedure. This

would assist the relevant person in deciding whether to submit the matter concerned for disposal by the Tribunal Convenor.

14. The Law Society has explained that 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 in section 4(2)(a) the procedures provided in the other sections of the Rules. However, for the sake of clarity, the Law Society has proposed to add a new section 4(2)(c) relating to the content of the notice. Under the new provision, if the relevant person does not notify the Council representative in writing within 21 days after receiving the complaint sheet whether or not he wishes to discuss the matter with the Council representative, the matter shall be disposed of by SDT.

15. To further assist the relevant person, the Law Society has also proposed to attach to the notice a copy each of the Rules, the Solicitors Disciplinary Tribunal Proceedings Rules, and the "Procedural Chart on Summary Disposal".

Revocation of decision by the Council

16. Under section 4(2)(b), a relevant person is required to notify the Council representative in writing within 21 days after receiving the complaint sheet whether or not he wishes to discuss the matter with the Council representative. Under section 5, the Council may, at any time within 21 days after the sending of a complaint sheet to a relevant person, revoke its decision to submit the matter to the Tribunal Convenor.

17. Members have asked about the circumstances under which the Council would revoke its decision. The Law Society has explained that section 9A(1B) of LPO enables the Council to consider any other relevant factors in deciding whether a matter is suitable for disposal by the Tribunal Convenor. Section 5 of LPO enables the Council to consider relevant factors which may emerge during the 21-day period prior to any discussion between the relevant person and the Council representative. Circumstances which may lead the Council to revoke its decision include, for example, a discovery during the 21-day period of repeated breaches of a similar nature supporting the view that the subject breach involves more serious professional issues than a simple mistake on one occasion.

18. Some members have pointed out that there could be a situation where the relevant person decides not to go through the discussion process and agrees in writing for the matter to be disposed of by the Tribunal Convenor within 21 days after receiving the complaint sheet. However, the Council subsequently revokes its decision to submit the matter for disposal by the Tribunal Convenor. These members consider it unfair to the relevant person if the Council is allowed to revoke its decision under the circumstances, albeit its decision is made within the 21-day period. The Subcommittee has asked the Law Society to consider whether the discussion process is mandatory bearing in mind that the objective of the summary

disposal procedure is to expedite the disciplinary procedure, and whether the power of the Council to revoke its decision under section 5 should be limited.

19. The Law Society has explained that the 21-day period for discussion (section 6) will start from the day after the receipt of the notification by the Council representative from the relevant person that he wishes to discuss the matter. The Law Society considers it inappropriate to allow the relevant person to elect not to go through the process of discussion with the Council representative. The Law Society has pointed out that process of discussion is important as the summary disposal procedure is a disciplinary procedure, and the relevant person should be given reasonable time to consider the facts of the complaint against him and to ensure that they are accurate. 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.

20. The Law Society has also explained that it is not the intention of the Council to revoke its decision to submit the matter to the Tribunal Convenor once the relevant person has notified it of his decision to enter into discussion with the Council representative. For the sake of clarity, the Law Society has proposed to amend section 5(1) to restrict the Council's power to revoke its decision to submit the matter to the Tribunal Convenor to the period before receipt by the Council representative of notification from the relevant person as to whether he wishes to discuss the matter with the Council representative.

21. The Subcommittee has considered when the notice of revocation will take effect in a situation where the notice of revocation of the Council crosses with the notification indicating the relevant person's wish to discuss the matter with the Council representative. The Subcommittee notes that under the circumstance described, the Council's decision to revoke takes effect when it was made.

Revocation of decision by relevant person

22. Some members consider that the relevant person should also be allowed to revoke his decision for the sake of equity. The Law Society is of the view that it is not necessary to provide for any circumstances whereby a relevant person could revoke his decision, as he 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 he discusses with the Council representative, 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 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.

Fixed penalty and fixed investigation costs

23. The amounts of the fixed penalty (\$10,000) and the fixed investigation cost (\$15,000) are set out in the Schedule to the Rules. The Subcommittee has asked the Law Society to explain the rationale of setting the fixed penalty at \$10,000. The Law Society has advised members the proposal has taken into account past decisions of the SDT that \$10,000 was an appropriate average penalty for offences of a minor nature.

24. As regards the rationale for setting the investigation costs at \$15,000, the Law Society has explained that the fixed investigation costs reflect the expected costs of investigating and prosecuting breaches of the scheduled items. The amount of costs would not vary significantly with different kinds of breach since the processes of investigation and prosecution are essentially similar and the breaches will only be of a minor nature.

25. The Law Society has advised the Subcommittee that it has discussed with the Chief Justice and would review the amounts of fixed penalty and fixed investigation cost two years after the operation of the Rules.

Recommendation

26. The Subcommittee supports the amendments proposed by the Law Society in paragraphs 14 and 20 above. According to the Law Society, the Chief Justice has approved the proposed amendments. On behalf of the Law Society, the Secretary for Justice will move a motion to amend the Rules at the Council meeting on 14 January 2004. The wording of the motion is in **Appendix IV**.

27. Subject to the amendments to be moved by the Secretary for Justice, the Subcommittee supports the Rules.

Advice sought

28. Members are invited to note the recommendation of the Subcommittee.

Subcommittee on Summary Disposal of Complaints (Solicitors) Rules

Membership list

Chairman Hon Margaret NG

Members Hon Albert HO Chun-yan
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

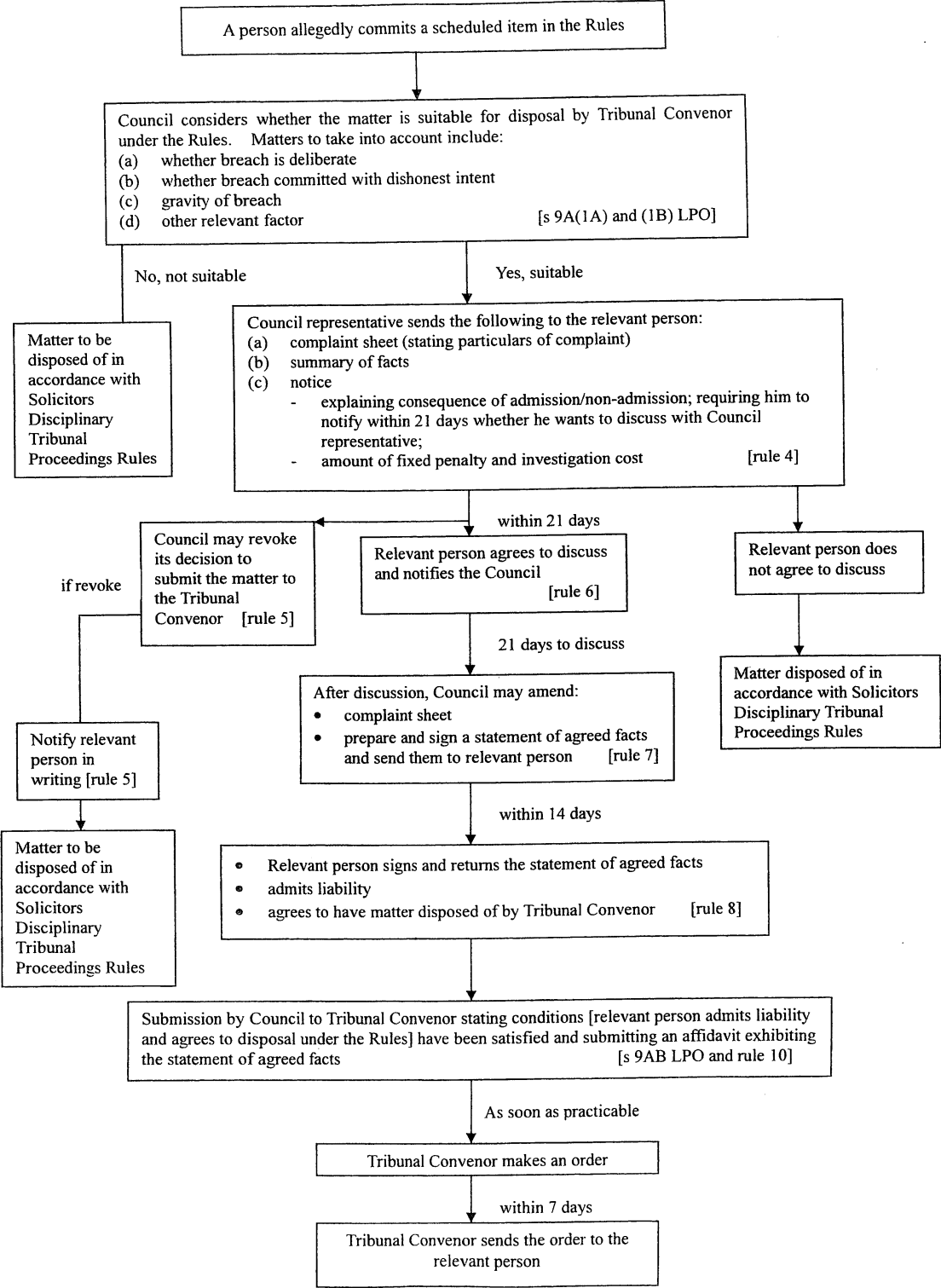
(Total : 5 Members)

Clerk Mrs Percy MA

Legal Adviser Mr Stephen LAM

Date 8 December 2003

Procedural Chart on Summary Disposal



Appendix III

**OFFENCES WHICH MAY BE DEALT WITH
UNDER THE DISPOSAL OF COMPLAINTS (SOLICITORS) RULES****LEGAL PRACTITIONERS ORDINANCE****Section 8(1) "Accountant's reports"**

- Failure to submit an accountant's report within the prescribed time limit

SOLICITORS' PRACTICE RULES**Rule 2B "Letterhead"**

- Failure to comply with mandatory requirements on what should be stated on a firm's letterhead, as set out in subrule (2)
- Where a firm opts to state on its letterhead any of the matters set out in subrule (3), failure to satisfy the pre-conditions to do so

Rule 4A "Supervision of office"

- Breach of subrule (a) requiring a solicitor with a practising certificate to be in attendance at an office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a solicitor holding an unconditional practising certificate

Rule 4B "Control of employment of unqualified persons"

- Breach of the ratio of unqualified person to solicitors in subrule (1) without having sought a waiver from the Council
- Breach of subrule (2) by knowingly employing an unqualified person who is also employed by another firm without Council approval
- Breach of subrule (4) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

Rule 5 "Particulars relating to firms"

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

Rule 5D "Steps to be taken in criminal matters"

- Breach of subrule (a) - failure to issue a confirmation letter to the client
- Breach of subrule (b) - failure to notify the client in writing of change in the information and obtain written consent
- Breach of subrule (c) - failure to deliver an account to the client at the end of the case
- Breach of subrule (d) - failure to deliver receipt to client for fees or costs and disbursements
- Breach of subrule (e) - failure to deliver backsheets to counsel

- Breach of subrule (f) - payment to counsel without receipt of a fee note
- Breach of subrule (g) - failure to retain copies of documents for at least two years after completion

SOLICITORS (PROFESSIONAL INDEMNITY) RULES

- Failure to submit an accountant's certificate under rule 8(1)(a)

CONTINUING PROFESSIONAL DEVELOPMENT RULES

- Failure to comply with the requirement to accumulate sufficient continuing professional development accreditation points, as set out in rule 5

FOREIGN LAWYERS PRACTICE RULES

Rule 5 "Business letters"

- Failure to comply with the mandatory requirements on what should be stated on the firm's letterhead, as set out in subrules (1) or (2)

Rule 6 "Supervision of office"

- Breach of subrule (a) requiring a foreign lawyer to be in attendance at the office during the hours it is open to the public
- Breach of subrule (b) requiring the office to be attended each day by a foreign lawyer holding an unconditional certificate of registration

Rule 7 "Sharing an office and staff"

- Breach of subrule (4) - failure to have adequate signs in common areas

Rule 8 "Control of employment of unqualified persons"

- Breach of the ratio between persons who are not foreign lawyers and resident partners and full-time foreign lawyers, as set out in subrule (1) without having sought a waiver from the Council
- Breach of subrule (3) by allowing an unqualified person to carry a name card in the name of the firm without a clear description of his job capacity

Rule 9 "Reporting of particulars"

- Failure to provide the Society with the particulars required in subrules (1), (1A), (2) or (3)

PRACTICE DIRECTIONS**PD B.1 "Solicitors' Bill of Costs"**

- Failure to render an itemized bill to a client upon request

PD C.3 "Steps to be taken in criminal matters"

- Breach of subparagraph (2) - failure to carry the confirmatory letter from the client when at court

PD D.2 "Signature of post"

- Breach of subparagraph (1) - failure to ensure letters in the course of professional practice are signed by an approved signatory

PD D.5 "Sharing an office and staff"

- Breach of subparagraph (4) - failure to have adequate signs in common areas

PD D.7 "Cessation of practice"

- Breach of subparagraph (1) - failure to notify the Society 6 weeks prior to cessation date
- Breach of subparagraph (2) - failure to appoint an agent

PD D.8 "Format of electronic communications"

- Failure to comply with mandatory requirements on what should be stated on electronic communications, set out in subparagraph (1)
- Breach of subparagraph (2) - issue of an e-mail by unapproved person

PD F.1 "Instructions to counsel"

- Breach of subparagraph (1) - failure to supply backsheets (see Solicitors' Practice Rule 5D)

PD G. "Professional stationery"

- Breach of PD G.1 (1) - failure to state the names of principals on business letters
- Breach of PD G.1 (2) - failure to specify non-resident partners on business letters
- Breach of PD G.1A (1) - failure to state foreign lawyer's jurisdiction
- Breach of PD G.2 (1) - stating "PCLL" or similar "qualification" on name card

PD H.1 "Election addresses"

- Breach of subparagraph (2) - stating name or address of firm or advertising work as solicitor during election to public office

THE HONG KONG SOLICITORS' GUIDE TO PROFESSIONAL CONDUCT

VOLUME 1 OF "THE HONG KONG SOLICITORS' GUIDE TO PROFESSIONAL CONDUCT"

Principle 13.09 "When an oath must not be administered"

- Administering an oath or affirmation or taking a declaration in a proceeding or matter in which the solicitor or his firm is acting for any of the parties, or is otherwise interested

Principle 14.02 "Performance of undertakings"

- Breach of undertaking in conveyancing matters

Appendix IV**INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1))

SUMMARY DISPOSAL OF COMPLAINTS (SOLICITORS) RULES

RESOLVED that the Summary Disposal of Complaints (Solicitors) Rules, published in the Gazette as Legal Notice No. 251 of 2003 and laid on the table of the Legislative Council on 26 November 2003, be amended -

- (a) in section 4(2) -
 - (i) in paragraph (a)(ii), by repealing "and" at the end;
 - (ii) in paragraph (b), by repealing the full stop at the end and substituting "; and";
 - (iii) by adding -
 - "(c) stating that if the relevant person does not notify the Council representative as required by paragraph (b), the matter shall be disposed of by the Solicitors Disciplinary Tribunal.";

- (b) in section 5(1), by repealing "at any time within 21 days thereafter" and substituting ", at any time within 21 days thereafter but before the receipt by the Council representative of notification from the relevant person as to whether he wishes to discuss the matter with the Council representative,".

《釋義及通則條例》

決議

(根據《釋義及通則條例》(第1章)第34(2)條)

《簡易處理申訴(律師)規則》

議決修訂於2003年11月26日提交立法會會議省覽的《簡易處理申訴(律師)規則》(即刊登於憲報的2003年第251號法律公告) —

(a) 在第4(2)條中 —

- (i) 在(a)(ii)段中，廢除末處的“及”；
- (ii) 在(b)段中，廢除末處的句號而代以“及”；
- (iii) 加入 —
 - “(c) 述明如有關人士沒有按(b)段的規定通知理事會代表，該事宜即由律師紀律審裁組處理。”；

(b) 在第5(1)條中，在“內”之後加入“但在理事會代表收到有關人士就他是否希望與理事會代表商議該事宜發出的通知前”。