

**HONG KONG BAR ASSOCIATION**

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**TO** : **All Press**

**FROM** : **Bar Secretariat**

**DATE** : **5<sup>th</sup> July 2010**

**NO. OF PAGES** : **8 (including cover page)**

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**Press release of the Hong Kong Bar Association as regards  
Bar Disciplinary proceedings under the Legal Practitioners Ordinance (Cap 159)**

1. The Bar notes the media interest following the report in Ming Pao today about the disciplinary findings against a member of the Bar. The Bar does not intend to comment on any particular case, but wishes to assist with a proper understanding of the disciplinary process by which the profession of Barrister is governed by statute, namely the Legal Practitioners Ordinance (Cap 159) ("LPO").
2. Disciplinary proceedings against a barrister under the LPO are conducted before a Barristers Disciplinary Tribunal ("BDT"). Members of the BDT for a particular inquiry are appointed by the Tribunal Convenor (currently Mr. Ronny Tong SC) from a Panel consisting of both barristers and lay persons. Members of that panel are appointed by the Chief Justice. Each BDT comprises two barrister members and one lay member.
3. The BDT is a statutory tribunal independent of the Bar Council; no member of the Bar Council can be a member of the panel for possible appointment to a BDT.
4. BDT proceedings are required by section 35B(2) of the LPO to be conducted in camera (meaning not open to the public), unless the barrister whose conduct is being inquired into requests that the proceedings be open to the public.
5. If a member is found liable for any disciplinary offence by a BDT, section 37A of the LPO requires the Registrar of the High Court to enter a note of the relevant order(s) of the BDT onto the Roll of Barristers against the name of the barrister. The Roll of Barristers is a public document which can be inspected by the public free of charge.

6. The degree of further promulgation to be given to results of disciplinary proceedings (including the judgment itself) will depend on the contents of the judgment, and the recommendations or order of the BDT. Unless any specific promulgation is expressly or impliedly authorized by the BDT, the Bar Council is likely to consider itself to continue to be bound by s.35B(2) of the LPO, save the content of the note in the Roll of Barristers.
7. The Bar Council, like all parties before the BDT, has to act in accordance with the law and any order which the Tribunal makes.
8. The Bar Council considers that the statutory disciplinary process shows that the profession sets high standards for – and expects high standards from – its members. It is part of the regulatory and administrative system for the barristers' profession, which has rightly earned a reputation for probity.
9. Anybody who is interested in the procedure by which the Bar Council handles disciplinary complaints is further referred to the leaflet called "Lodging a Complaint against a Barrister", available on the Bar's website (a copy attached).

**Hong Kong Bar Association**

5<sup>th</sup> July 2010



## Lodging a Complaint against a Barrister

### (I) Introduction

All barristers are subject to rules of conduct and must observe high standards of ethics. When a barrister acts for you in court or gives you advice you are entitled to expect your case to be handled in a professional and ethical manner. If you feel that this has not happened and you wish to have the conduct of the barrister investigated, you may lodge a complaint with the Hong Kong Bar Association. The Hong Kong Bar Association is required to promote high standards of conduct and ethics. Any barrister who falls below those standards may be liable to disciplinary sanction.

The Hong Kong Bar Association has an important role in the disciplinary process and the handling of allegations of misconduct against barristers.

Complaints about misconduct by a barrister should be made to the Bar Secretariat. The address is mentioned later. If a person wishes to complain about the conduct of a barrister, it is important that this is done as soon as possible after the conduct about which you wish to complain. Delay in lodging a complaint may make proper investigation very difficult - which may be unfair to the person who makes the complaint and unfair to the barrister concerned. The Hong Kong Bar Association will also accept complaints from people who are making complaints on behalf of others provided it is clear that the person on whose behalf the complaint is made authorizes this course.

Once the Hong Kong Bar Association received a complaint of misconduct on the part of a barrister, the complaint is investigated. If after an investigation it appears that the conduct complained of may amount to professional misconduct, it will be referred to the Barristers Disciplinary Tribunal. Less serious conduct may be dealt with by the Chairman of the Bar.

If the Bar Council does not submit a complaint to a Barristers Disciplinary Tribunal within six months (whether because it has not finished its investigation or because it decides not to), a complainant may ask the Chief Judge of the High Court to convene a Barristers Disciplinary Tribunal.

## (II) How to make a complaint?

Obtain a complaint form from the Bar Secretariat or  
Fill in your particulars on our homepage <http://www.hkba.org/the-bar/discipline/index.html>  
and we will send you a complaint form via mail or e-mail



Complete the form\*

(Please provide us with your personal details and details of the complaint to facilitate subsequent investigation. It is also fair to the barrister against whom the complaint is made to permit him to know what is alleged in relation to him/her.)



Sign the Declaration in the last page of the form



Send the completed form with relevant copies of documents to the Bar Secretariat  
(Wherever possible we will acknowledge receipt of the complaint within 10 days.  
As the nature of the complaints vary, so will the time necessary to investigate those complaints.  
However, the complaint will be dealt with as quickly as possible.)

\* If you are not able to fill the form or otherwise have difficulty with it, please contact the Bar Secretariat.

## (III) How will your complaint be dealt with?

Receipt of properly filled Complaint Form



Matter referred to the Special Committee on Discipline for investigation  
(During the investigation process, it may be necessary to obtain further information from the complainant, so complainants must be ready to assist in this regard.  
As the nature of the complaints vary, so will the time necessary to investigate those complaints.  
However, the complaint will be dealt with as quickly as possible.)



Report submitted by the Committee to the Bar Council for decisions or action



1) Where the Bar Council considers that the conduct complained of, if substantiated,  
may amount to professional misconduct,  
and that it should be inquired into by the Barristers Disciplinary Tribunal (BDT) →  
Referred to BDT for disciplinary hearings →  
Determination of what action to take is Judgment made by BDT\*

OR

2) Where the Bar Council considers the complaint substantiated,  
but the conduct complained of does not amount to professional misconduct →  
punishment of the barrister by the Chairman of the Bar

OR

3) Unfounded complaints → Dismissal

\* The Barristers Disciplinary Tribunal hearing proceeds before a senior barrister and members of the community appointed by the Chief Justice. The hearing is required by law to be fair. The barrister who is accused of misconduct is entitled to challenge the accusation. The complainant and witnesses named by him in the complaint form may have to testify.

#### (IV) Reminder – What we can and cannot do?

*We Can:*

- Investigate complaints against barristers only when a properly signed standard Complaint Form is submitted
- Take disciplinary actions against barristers

*We Cannot:*

- Deal with complaints against solicitors; judges (even if the judge is a barrister); the Director of Legal Aid and officers employed by the Director of Legal Aid (unless the officer concerned is a barrister); and the Duty Lawyer Service and officers employed by the Duty Lawyer Service (unless the officer concerned is a barrister).
- Provide legal advice or assistance
- Influence the outcome of court proceedings
- Compensate your loss and help you with claims for negligence. Only the court can deal with these and you should get advice from an independent legal adviser.

#### (V) Enquiry

If you have any enquiries, please feel free to contact our Secretariat at  
LG2, High Court, 38 Queensway, Hong Kong. Telephone No. (852) 2869 0210.





# 投訴大律師

## (I) 簡介

所有大律師均備受專業守則約束，並須奉從高度的道德標準。當大律師代表你出庭或向你提供法律意見時，你有權期望該大律師以專業及合乎道德的方法處理你的案件；如果你認為實非如此，並希望該大律師之操守受到調查，你可向香港大律師公會作出投訴。

香港大律師公會有責任促進行內高度的行為操守和道德標準。任何不達到該標準的大律師均可能受到紀律處分。

香港大律師公會在紀律處分程序及相關投訴的處理，均擔當重要的角色。

所有有關大律師不當行為之投訴須遞交至公會秘書處，秘書處的地址已列於本小冊子末段。任何人欲就大律師之行為操守作出投訴，應在有關事情發生後盡快提出。此點非常重要。延誤投訴可能導致調查工作非常困難，這樣對投訴人及被投訴之大律師均不公平。香港大律師公會亦會接受由其他人士代表當事人作出的投訴，只須有關投訴清楚地已獲該當事人授權。

香港大律師公會在收到有關大律師行為不當的投訴後，會馬上作出調查。如調查結果顯示有關行為可能構成專業操守失當，公會會將投訴呈交至大律師紀律審裁組；而較輕微的操守失當則可由公會主席處理。

如公會執委會於收到投訴後六個月內沒有將有關投訴呈交大律師紀律審裁組（不論是因調查工作仍未完成，或執委會決定不將該案呈交審裁組），投訴人可向高等法院首席法官提出要求將有關事宜呈交審裁組召集人。

## (II) 如何作出投訴？

親臨公會秘書處索取投訴表格  
或於公會網站 <http://www.hkba.org/the-bar/discipline/index.html> 填妥你的聯絡資料，  
以便本會將投訴表格郵寄或電郵給你

↓  
填妥表格\*

( 請提供你的個人資料及投訴詳情，以助本會日後進行調查；  
為公平起見，應容許被投訴之大律師知悉有關投訴 )

↓  
簽署表格最後一頁「聲明」一欄

↓  
將已填妥的表格連同相關文件之複印本遞交公會秘書處。

( 在可行的情況下，我們會於十日內確認收悉投訴表格。  
處理投訴所須時間因投訴性質各異而各有不同，然而，我們會盡快處理有關投訴。 )

\* 如你對填寫表格有任何疑難，請與秘書處聯絡。

## (III) 我們會如何處理你的投訴？

收悉已填妥之投訴表格

↓  
投訴轉介至紀律委員會調查

( 在調查過程中，本會或須向投訴人索取更多資料，  
因此投訴人在這方面必須預備協助本會。  
處理投訴所須時間因投訴性質各異而各有不同，然而，我們會盡快處理有關投訴。 )

↓  
紀律委員會向公會執委會提交報告，由公會執委會作出決定或行動

- ↓
- 1) 公會執委會認為若投訴成立可能會涉及專業行為失當，及應該由大律師紀律審裁組對相關的行為操守進行研訊 → 轉介至大律師紀律審裁組進行紀律聆訊 → 審裁組裁定所須採取的行動\*
  - 或
  - 2) 公會執委會認為投訴成立但相關的行為操守並不涉及專業行為失當 → 由公會主席向相關之大律師作出訓戒
  - 或
  - 3) 理據不足之投訴 → 撤銷

\* 大律師紀律審裁組的聆訊由一位資深大律師會同其他由終審法院首席法官委任的公眾人士審理。法律規定此聆訊必須公正；被投訴之大律師有權就有關控罪作出抗辯。而投訴人及表格上列明的證人或須出庭作證。

#### (IV) 注意事項—我們可以做什麼？不可以做什麼？

我們可以：

- 在收到已簽署的投訴表格後，調查與大律師有關之投訴
- 對大律師作出紀律處分

我們不可以：

- 處理對以下人士或服務之投訴：事務律師；法官（即使該法官本身是一名大律師）；法律援助署署長及該署之職員（除非該職員本身是一名大律師）；以及當值律師服務或受聘於當值律師服務計劃的職員（除非該職員本身是一名大律師）。
- 給予法律意見或協助
- 影響任何在法庭進行中的法律訴訟之結果
- 賠償你的損失，或協助你追討因專業疏忽而招致的損失。只有法院才有權處理上述之事宜，而你應向獨立法律人士徵詢意見。

#### (V) 查詢

如有任何查詢，歡迎聯絡公會秘書處。

（地址：香港金鐘道三十八號高等法院低層二樓；電話：(852) 2869 0210）

