

Report of the Standing Committee on Discipline 2020

Investigation

(a) On-going / Outstanding Investigations

1. As of 15 December 2020, 1 disciplinary matter initiated by the Bar Council in 2015 and 11 complaints received between 2017 and 2020 were in active progress of investigation or pending conclusion of related judicial process. The 12 cases, classified according to their nature, are summarised as follows:

| Nature of Complaint | Years when the Complaints were received | | | | | No. of Complaints |
|----------------------------------|---|----------|----------|----------|----------|-------------------|
| | 2015 | 2017 | 2018 | 2019 | 2020 | |
| (i) Misconduct | 0 | 0 | 0 | 1 | 4 | 5 |
| (ii) Professional Responsibility | 0 | 1 | 1 | 0 | 1 | 2 |
| (iii) Dishonesty / Ethics | 1 | 0 | 0 | 1 | 0 | 2 |
| (iv) Practising Rules | 0 | 0 | 1 | 1 | 1 | 3 |
| Total | 1 | 1 | 2 | 2 | 6 | 12 |

(b) Completed Investigations

2. During the year (as of 15 December 2020), the Bar Council considered the results of investigation in 20 complaint cases. The 20 cases are classified according to their nature as follows:-

| Nature of Complaint | Years when the Complaints received | | | | | No. of Complaints |
|----------------------------------|------------------------------------|----------|----------|----------|----------|-------------------|
| | 2016 | 2017 | 2018 | 2019 | 2020 | |
| (i) Misconduct | 0 | 0 | 1 | 2 | 3 | 6 |
| (ii) Professional Responsibility | 0 | 0 | 4 | 3 | 2 | 9 |
| (iii) Dishonesty / Ethics | 0 | 0 | 0 | 1 | 1 | 2 |
| (iv) Charging of Counsel Fees | 0 | 2 | 0 | 0 | 0 | 2 |
| (v) Practising Rules | 1 | 0 | 0 | 0 | 0 | 1 |
| Total | 1 | 2 | 5 | 6 | 6 | 20 |

3. Among the 20 cases, 14 were resolved as unsubstantiated and dismissed for there being no *prima facie* case. 5 cases were resolved by the Bar Council to be substantiated and referred to the Barristers Disciplinary Tribunal for inquiry. In 1 case the Bar Council found that the subject barrister was in breach of professional standard of minor nature and was admonished.

(c) Late Renewal of Practising Certificates

4. At the beginning of 2020, except for 1 member who left chambers and gave no notice of cessation of practice, there was no record of members who were late in paying the prescribed annual fees and insurance charges for renewing the Practising Certificates. No member was found to have been practising without holding a valid Practising Certificate.

(d) Outstanding Backlogged Cases

5. In 2020 the Standing Committee reported to the Bar Council that there was a backlog of 38 complaint cases since 2017 which were kept by the Bar Secretariat for initial processing and collection of relevant information without presenting to the Standing Committee for investigation. To tackle the issue of backlogged cases a task force of 8 persons was formed in November 2020 to work to expedite processing of those cases. By 15 December 2020 four of these backlogged cases had been considered summarily by the Standing Committee and disposed of by the Bar Council. It is hoped that the preliminary investigation of the rest of the backlog will be completed by the end of the term of this Council.

Barristers Disciplinary Tribunal

6. During the year, 3 Barristers Disciplinary Tribunals (BDTs) were convened by the Tribunal Convenor and conducted proceedings in relation to **3 pending Disciplinary Inquiries**. Progress in the proceedings are summarised below:-

| Case Ref | Progress |
|--|--|
| 01/2015 | 4 charges were laid against the Respondent; The Tribunal Convenor re-constituted a new BDT as the previous one had gone defunct; The re-constituted BDT heard application from the Bar Council and granted leave to withdraw the charges against the Respondent on the ground that all attempts to serve documents on him were unsuccessful. |
| 15/2015 01/2017 03/2017 06/2017 (Consolidated) | 11 charges were laid against the Respondent; The Respondent intended to instruct overseas Queen's Counsel to represent him in the hearings before BDT; The High Court shall hear application for ad-hoc admission of the Queen's Counsel in March 2021. |
| 13/2017 | 2 charges were laid against the Respondent; The Respondent entered not guilty plea to both charges; The BDT shall consider modes of hearing and other arrangements as the Respondent has moved out of Hong Kong. |

7. During the year, the Court of Appeal dealt with two appeals against the Orders of the BDTs. In one appeal the Bar Council requested the Appellant to expedite application to fix a date for substantive hearing. In another appeal the Court is in the course of considering the Appellant's application for leave to appeal out of time on paper.
8. At present, there are 6 outstanding BDT matters pending referral to the BDT and setting up of BDT panels.
9. As reported in the Annual Report 2019, the Standing Committee had streamlined the process of investigation and endeavoured to conclude investigation for each complaint within 6 months. As part of the reform in the complaint handling procedure, the Standing Committee further proposed a new policy that investigation shall no longer be suspended automatically on the ground of they being *sub judice*. Instead, the Standing Committee will request the complainers to indicate if they would apply for the investigation to be stayed by reason of on-going relevant legal proceedings or investigation by other agencies. The new policy was endorsed by the Bar Council in September 2020 and took immediate effect.

10. The following members served on the Committee this year: Mr. Johnny Mok SC, Mr. Anthony Houghton SC, Mr. Nicholas Cooney SC, Mr. Graham Harris SC, Mr. Eugene Fung SC, Mr. Richard Khaw SC, Mr. Ronald Tang, Mr. Bernard Chung, Mr. Walker Sham, Mr. Alfred Liang, Mr. Lawrence Ng, Mr. Timmy Yip, Mr. Joseph Vaughan, Mr. Sanjay Sakhrani, Mr. Ling Chun Wai, Ms. Phillis Loh, Mr. Paul H.M. Leung, Mr. Charles J Chan, Ms. Elaine Liu, Ms. Amanda Li, Mr. Tony Li, Mr. Martin Wong, Mr. Joe Chan, Mr. Jeffrey Tam and Ms. Christy Wong (Secretary to the Standing Committee). Significant support was given to the work of the Standing Committee by Mr. Jonathan Tai, Ms. Tessa Chan, Mr. Adrian Y.Y. Lo, Ms. Agnes N.W. Kwok and Ms. Mondy M.H. Ho as members of the Task Force referred to in paragraph 5 above.

11. I am indebted to all members of the Standing Committee who have undertaken the work of investigation on voluntary basis. In investigating and considering the disciplinary matters, most of which are complicated and time consuming, and preparing comprehensive reports to the Bar Council, they provided vital support to the Bar Council in maintaining the highest professional standards for barristers in Hong Kong.

12. The Bar Administrator, Dora leading the team of the Bar Secretariat have given tremendous assistance in the work of the Standing Committee which is much appreciated.

Erik Shum

Chairman, Standing Committee on Discipline

December 2020