



**Resolution Adopted at the 75th Annual General Meeting of the Malaysian Bar
Held on 13 March 2021**

**Resolution to Clarify the Validity of the Bar Council’s Sexual Harassment Mechanism
Adopted Pursuant to Bar Council Circular No 54/2007 Dated 2 March 2007 Titled
“Code of Practice on the Prevention and Eradication of Sexual Harassment in the
Workplace”**

WHEREAS:

- (1) On 2 March 2007, the Bar Council issued Circular No 54/2007 (“Circular”)¹ announcing that it had adopted a mechanism for the resolution of sexual harassment complaints for Members of the Bar and pupils within the legal profession and in dealings with the judiciary and the courts (“Complaints Mechanism”).
- (2) The Complaints Mechanism was taken pursuant to the adoption of the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace (“Code”) at the 59th Annual General Meeting of the Malaysian Bar, which was held on 22 October 2005.
- (3) According to a *Malaysiakini* press article published on 30 November 2020 (“Press Article”):²
 - (3.1) It was reported that a complainant who had attempted to bring a complaint under the Complaints Mechanism was told that the Complaints Mechanism is faulty due to a legal impediment. The said complainant was advised to lodge a separate complaint with the Advocates and Solicitors Disciplinary Board;
 - (3.2) Upon being contacted by *Malaysiakini*, the outgoing Malaysian Bar President Salim Bashir reportedly confirmed that the Bar’s internal mechanism to deal with sexual misconduct is facing a legal hurdle, stating:

“However, due to legal impediments, we are not able to proceed further in conducting any inquiry on the subject matter.”
 - (3.3) He stated that the Malaysian Bar is unable to hold sexual harassment inquiries under the Complaints Mechanism on the basis that only the Advocates and Solicitors Disciplinary Board is empowered under the Legal Profession Act 1976 to carry out inquiries against Members of the Bar; and

¹ https://klbar.org.my/wp-content/uploads/2017/08/BC54_2007.pdf.

² <https://www.malaysiakini.com/news/553097>.

- (3.4) To date, on record there has only been one complaint brought under the Complaints Mechanism since 2007.
- (4) However, despite Salim Bashir reportedly confirming that the Complaints Mechanism is invalid:
- (4.1) The Bar Council has not, to date, issued any official statement or circular to Members on the matter stated in paragraphs (3.2) and (3.3) above;
- (4.2) To date, the Bar Council has not clarified or elaborated on the purported legal impediment of the Complaints Mechanism;
- (4.3) To date, the Bar Council has not clarified how it intends to address the purported legal impediment of the Complaints Mechanism, or whether it intends to address it at all; and
- (4.4) To date, the Malaysian Bar has not clarified the validity of the Complaints Mechanism — whether it is still valid, and Members of the Bar may still bring complaints under the Complaints Mechanism or otherwise.
- (5) Members of the Bar have a right and are fully entitled to know of the matters set out in paragraph (4.1) to (4.4) above. In this regard:
- (5.1) There is a need for Members of the Bar to be informed of the current position of the Complaints Mechanism, in particular, whether it is invalid or otherwise. In the absence of such, the Complaints Mechanism which is now 14 years old is still deemed valid as an available recourse to Members of the Bar when this is reportedly no longer the case; and
- (5.2) The lack of announcement / clarification by the Bar Council on the Complaints Mechanism and its purported legal impediment does not reflect the Malaysian Bar's commitment to fully adopt and implement the Code. This is wholly inconsistent with the Bar's reiteration of its commitment to "*pursue the facilitation of a safe and healthy environment that is free from unwanted harassment and intimidation of a sexual nature.*"³

THEREFORE, it is hereby resolved that:

The Bar Council shall immediately and without further delay take all necessary steps to:

- (A) Clarify the purported legal impediment of the Complaints Mechanism;
- (B) Clarify how, if indeed there is a legal impediment of the Complaints Mechanism, the Bar Council intends to address the legal impediment;
- (C) Clarify the validity of the Complaints Mechanism in addressing the sole reported sexual harassment complaint, and its present status;

³ <https://www.malaysianbar.org.my/article/about-us/president-s-corner/presstatements/press-release-high-time-for-legal-and-social-reform-and-the-enactment-of-sexual-harassment-legislation>.

- (D) Clarify the validity of the Complaints Mechanism in addressing future sexual harassment complaints by pupils and Members of the Bar;
- (E) Clarify whether the Complaints Mechanism has been subjected to a periodic five-year review;
- (F) Issue an official statement addressing items (A) to (E) above; and
- (G) Further consider the inherent issues with the Complaints Mechanism evidenced by the lack of reporting and utilisation of the Complaints Mechanism after 14 years.