



Solicitors
Disciplinary Tribunal

Chairman's Report **2007**

YEAR ENDING 31 DECEMBER 2007



Solicitors Disciplinary Tribunal



Constitution and Powers of the Solicitors Disciplinary Tribunal

The Solicitors Disciplinary Tribunal is a statutory body, constituted under the *Solicitors (Amendment) Act 1960* as substituted by the *Solicitors (Amendment) Act 1994* and amended by the *Solicitors (Amendment) Act 2002*. The Tribunal is wholly independent of the Law Society of Ireland.

It is composed of 20 solicitor members and nine lay members, the latter being drawn from a wide variety of backgrounds. Their remit is to represent the interests of the general public. All Tribunal members are appointed by the President of the High Court – solicitor members from among practising solicitors of not less than ten years standing and lay members who are not solicitors or barristers.

Procedures of the Tribunal are also governed by the *Solicitors Disciplinary Tribunal Rules 2003*, which came into operation from 1 March 2003. Under the *Solicitors Acts 1954 to 2002*, the Tribunal’s powers are mainly confined to receiving and hearing complaints of professional misconduct against members of the solicitors’ profession.

Applications to the Tribunal are made by the Law Society of Ireland and, subject to a few instances under the *Solicitors Acts* where applications are limited to the Law Society, it is also open to members of the public to make a direct application to the Tribunal without resorting to the Law Society.

Section 19 of the *Solicitors (Amendment) Act 2002* has extended the powers of the Tribunal, giving it jurisdiction over trainee solicitors. In such cases, the Law Society may apply to the Tribunal to hold an inquiry into alleged misconduct by trainee solicitors.

SOLICITOR MEMBERS

Francis D. Daly, (Chairman)
Ernest Cantillon
Mary Cantrell
Michael Carrigan
Niall Casey
Helen Jeanne Cullen
Joseph Deane
Caroline Devlin
Paula Duffy
Anthony Ensor

SOLICITOR MEMBERS

Carol M. Fawsitt
Isabel Foley
Berchmans Gannon
Maeve Hayes
Edward McEllin
Brian M. McMahon
Caroline O’Connor
Michael V. O’Mahony
Hugh O’Neill
Ian Scott

LAY MEMBERS

Colette Carter
Caroline Caslin
Ted Conlon
Padraic Ingoldsby
Sean McClafferty
Margaret O’Shea
Fergus O’Tuama
Kristin Quinn
Ken O’Neill

TRIBUNAL REGISTRAR

Mary Lynch

SECRETARY TO REGISTRAR

Monica Murray

ADMINISTRATION ASSISTANT

Barry Lennon

Introduction

This is my fourth *Chairman's Report* and it covers the period 1 January to 31 December 2007. While there has been a welcome 10% decrease in the number of new applications made to the Tribunal in the year under review, it has still turned out to be another demanding year for members and staff of the Tribunal. This increased workload can be observed from the high increase in the number of sittings of the Tribunal, which has risen from 59 in 2006 to 84 sittings in the period under review. Despite the increase in the number of sittings, the Tribunal is aware of the large number of cases carried forward

from previous years that are awaiting inquiry. As a result, a review is, at present, being conducted in respect of the waiting list that has built up, and it is hoped that the time between the filing of an application and the ultimate determination of a case will be greatly reduced.

In addition to my functions as a member of the Tribunal, under the Tribunal's rules I am responsible for:

- Coordinating, in conjunction with the Tribunal Registrar, the administrative function of the Tribunal,

- Liaising with the President of the High Court in relation to the efficient administration of the Tribunal, and
- Convening and presiding at general meetings of members of the Tribunal held from time to time.

In respect of applications to the Tribunal, it is the function of the Tribunal to decide:

- a) That the facts are proved, and
- b) Whether, based on those facts, a solicitor is guilty of professional misconduct.

The Solicitors Disciplinary Tribunal is a statutory body, constituted under the *Solicitors (Amendment) Act 1960* as substituted by the *Solicitors (Amendment) Act 1994* and amended by the *Solicitors (Amendment) Act 2002*. The Tribunal is wholly independent of the Law Society of Ireland.

Careful consideration is given to all applications, and the Tribunal, as a matter of ordinary procedural fairness, strives to ensure that everyone is given a fair and public hearing within a reasonable time by an independent and impartial Tribunal. A party to proceedings is given a reasonable opportunity of presenting his/her case, which includes the opportunity to call evidence, cross-examine witnesses and seek the disclosure of relevant documents. Table 1 right shows the number of sittings of the Tribunal.

YEAR ENDING 31 DECEMBER	NUMBER OF SITTINGS OF TRIBUNAL
2003	38
2004	57
2005	55
2006	59
2007	84

Table 1



Applications

The Tribunal is concerned with complaints about professional misconduct of solicitors and trainee solicitors. The complaints must be made in the form specified by the Tribunal's rules, setting out the particular allegations of misconduct and outlining the details and evidence to support each allegation.

Where a formal complaint has been made, the Tribunal registrar serves all appropriate documentation on the respondent, who may furnish a replying affidavit in response to the particular complaints made by the applicant. Under rule 7 of the Tribunal's rules, the applicant, in turn, may furnish a replying affidavit, which should be confined to addressing matters raised in the respondent's affidavit. Further, the Tribunal, pursuant to rule 8 of the Tribunal's rules, may permit a further exchange of affidavits between the parties, where the overriding interests of justice so requires. The Tribunal regards this stage of the process as being of the utmost importance. Firstly, it allows an applicant to fully set out his/her complaints in a comprehensive manner by enumerating the particular complaints against the respondent and setting out the details and evidence to support each complaint. Secondly, the respondent is given the opportunity to reply in an equally comprehensive manner. However, affidavits furnished by the parties are often lacking in some important and required detail.

The Tribunal's experience is that, in a number of cases coming before it, the evidence and documentation exhibited by the applicant in the grounding affidavit may not be sufficient to support the particular allegations of misconduct against the respondent and may, in fact, support other allegations that are not set out as part of the case against the respondent. The Tribunal would like

every applicant to critically look at each allegation of misconduct and ensure that its precise wording reflects the evidence upon which the applicant intends to rely.

In regard to replying affidavits furnished by respondents, the Tribunal has observed that, on a number of occasions, respondents have failed to furnish full and thorough replies to all allegations set out in the applicant's grounding affidavit. As a consequence, the Tribunal, once it has been established that the allegations come within the ambit of professional misconduct, and in the absence of a response or adequate response from the respondent, usually finds that there is a *prima facie* case of misconduct on the part of the respondent concerned for inquiry. Subsequently, the respondent, perhaps on legal advice, then recognises the shortfalls in the replying affidavit and seeks the leave of the Tribunal to file a further, more comprehensive affidavit in order to fully rebut the allegations of misconduct. While the Tribunal may grant leave to the respondent to file a second replying affidavit, once an inquiry has been directed, the hearing must proceed. Consequently, the Tribunal would urge respondents to give careful consideration to the matters alleged against them when formulating their replies, as this may save the Tribunal and the parties to the proceedings time and expense.

Once the process of exchanging affidavits between the parties has been completed, the next stage is for a quorum of members of the Tribunal, consisting of two solicitor members and one lay member, to decide whether or not there is a *prima facie* case of misconduct on the part of the respondent for inquiry. Neither the applicant, nor the respondent, nor their legal representatives will be present at

this stage. If the Tribunal decides that there is a *prima facie* case for inquiry, the parties are notified of the decision and, in due course, of the commencement date for the inquiry. Where the Tribunal decides otherwise, the applicant may appeal to the High Court, within 21 days of receipt of the notification, in writing, of the Tribunal's decision that there was no *prima facie* case of misconduct on the part of the respondent for inquiry.

During the year under review, the High Court affirmed the decisions of the Tribunal in four cases where it had found that there was no *prima facie* case of professional misconduct on the part of the respondent for inquiry. In another case, while the High Court found that there was a *prima facie* case of misconduct on the part of the respondent in respect of one allegation, it affirmed the decision of the Tribunal in relation to four other allegations, where the Tribunal was of the opinion that there was no *prima facie* case for inquiry. The decision of the High Court in respect of five appeals is awaited.

In an appeal to the Supreme Court against a decision of the High Court affirming the finding of the Tribunal that there was no *prima facie* case of professional misconduct on the part of the respondent for inquiry, it was ordered, by consent, that one of the appellants' complaints be amended and that an inquiry be held in regard thereto. The Supreme Court, subject to the foregoing, upheld the decision of the High Court.

The decisions of the Supreme Court are also awaited in respect of two appeals against High Court orders made in 2005 and 2006 affirming the finding of the Tribunal that there was no *prima facie* case of misconduct on the part of the respondent for inquiry.

Misconduct includes:

- a) The commission of treason or a felony or a misdemeanour;
- b) The commission outside the state of a crime or an offence that would be a felony or a misdemeanour if committed in the state;
- c) The contravention of a provision of the *Solicitors Acts 1954 to 2002*, or any order or regulation made thereunder;
- d) In the course of practice as a solicitor:
 - (i) Having any direct or indirect connection, association or arrangement with any person (other than a client) whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of sections 55 or 56 or section 58 (which prohibits an unqualified person from drawing or preparing certain documents), as amended by the act of 1994, of the principal act or section 5 of the *Solicitors (Amendment) Act 2002*, or
 - (ii) Accepting instructions to provide legal services to a person from another person whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of those enactments;
- e) Any other conduct tending to bring the solicitors' profession into disrepute.

The Tribunal's hearings are held in public at the Tribunal's premises at The Friary, Bow Street, Smithfield, Dublin. While members of the press are sometimes in attendance, there are very few members of the public present. However, should the Tribunal, on hearing the parties to the proceedings, be of the view that it is appropriate to hear the matter in private, then the public shall be

excluded either from the whole or any part of the inquiry.

Where an inquiry has been directed, both parties to the application are notified of the date of the hearing and furnished with copies of all affidavits and documents filed by the parties. Any inquiry undertaken by the Tribunal must comply with the requirements of natural and constitutional justice. Procedural safeguards in place include giving a solicitor sufficient notice and details of the application and the opportunity to respond. It is recognised that the consequences of disciplinary proceedings can have a detrimental effect on the livelihood of a solicitor, and consequently the Tribunal endeavours to ensure that the conduct of proceedings is scrupulously fair. A stenographer is always in attendance at an inquiry, and there is mechanical sound recording of all proceedings before the Tribunal. Any party to an inquiry, on payment of the Tribunal's charges, is entitled to a copy of the verbatim note of the evidence and submissions made at the inquiry.

If any party fails to attend in person or be represented at the inquiry, the Tribunal may, upon proof of service upon such a party of the notice of the hearing, proceed to hear and determine the application in his/her absence.

Where, on completion of an inquiry, the Tribunal finds that there has been misconduct on the part of the respondent, it has the power, by order, to do one or more of the following:

- a) To advise and admonish or censure the solicitor;
- b) To direct payment of a sum, not exceeding €15,000, to be paid by the solicitor to the compensation fund;
- c) To direct that the solicitor shall pay a sum, not exceeding €15,000, as restitution or part

restitution to any aggrieved party, without prejudice to any legal right of such party;

- d) To direct that the whole or part of the costs of the Law Society or of any person appearing before it, as taxed by a taxing master of the High Court, in default of agreement, shall be paid by the solicitor.

Further, where the Tribunal finds that there has been misconduct on the part of the respondent and it does not propose to make any of the above orders, it may make a report to the High Court that will specify its recommendations as to the sanction that should be imposed. The Tribunal, when deliberating on its recommendation, will have regard to its findings of misconduct and to any finding of misconduct on the part of the respondent previously made by it, and not rescinded by the High Court, and to any order made by the court under the *Solicitors Acts 1954 to 2002* in respect of the respondent.

The High Court, after consideration of the Tribunal's report, may make an order to do one or more other things specified in section 8(1) of the 1960 act (as amended), which includes, *inter alia*, orders striking the name of the solicitor off the Roll of Solicitors or suspending the solicitor from practice.

The Tribunal continues its efforts to promote an understanding of the Tribunal's procedures. The Tribunal registrar and her staff provide information and assistance to lay applicants and respondent solicitors on the jurisdiction, practice and procedure of the Tribunal as set out in the *Solicitors Acts 1954 to 2002* and the *Tribunal Rules 2003*. Further, the Tribunal's website includes details of the Tribunal's rules, annual reports and diary:

www.solicitorsdisciplinarytribunal.ie.



Observations on Complaints before the Tribunal

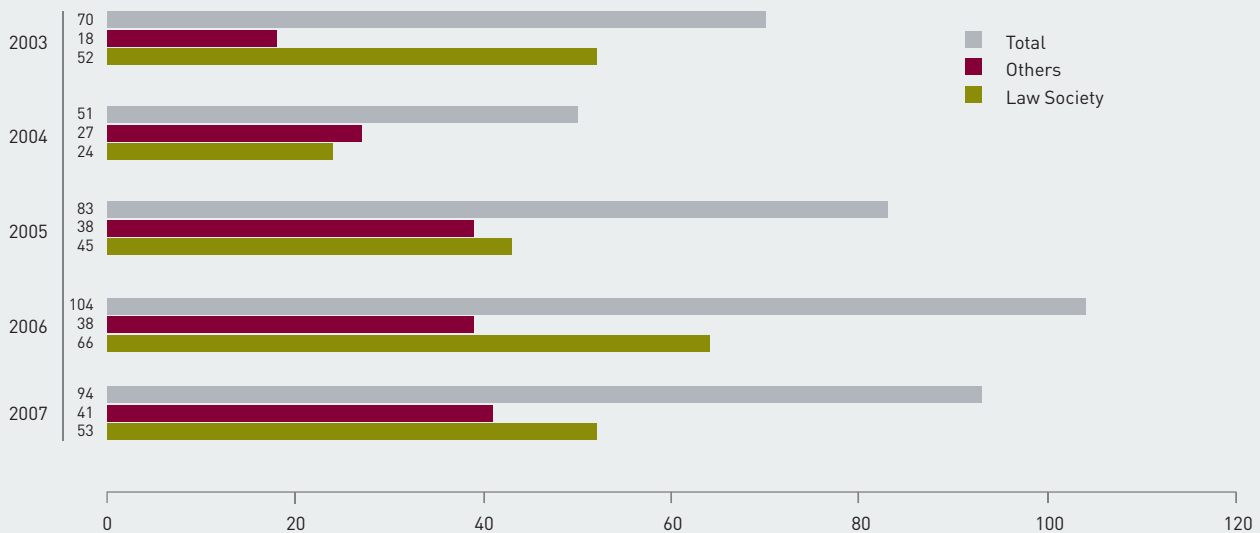
The year under review has seen an increase in the number of complaints arising from the administration of estates. Many of these complaints are of delay by solicitors in completing the administration of estates, or in properly distributing to beneficiaries their entitlements under estates, in a timely manner. Other complaints allege failure to provide sufficient information to beneficiaries and/or their solicitors to enable an administration to be finalised. In one case, the Tribunal, on the basis of the evidence adduced, found, *inter alia*, that the respondent had failed to respond to numerous letters from the solicitor acting for the person entitled to administer an estate and through his conduct caused delay and obstructed the solicitor in the administration of an estate. The Tribunal, having regard to the nature of its findings, made an order censuring the respondent solicitor and ordering him to pay a sum of €10,000 to the Law Society Compensation Fund.

In a further case, the Tribunal found a respondent guilty of professional misconduct when she failed to comply with her undertaking to furnish a CA11 Certificate in relation to a case, to discharge all judgment mortgages and to furnish satisfaction pieces. She also failed to reply to numerous correspondence from the Law Society. The Tribunal, on hearing submissions in relation to penalty, including a series of findings of professional misconduct previously made by the Tribunal against the respondent, was of the opinion that it was appropriate to refer the matter to the President of the High Court with a recommendation that the respondent was not a fit person to be a member of the solicitors' profession and that her name be struck off the Roll of Solicitors.

A number of complaints demonstrated considerable failures and delays on the part of respondents in attending to conveyancing procedures.

The Tribunal found a respondent guilty of professional misconduct when he failed to furnish in a timely manner or at all such documents as counterpart leases for apartments, a Land Registry approved scheme map, a certificate of incorporation of a management company, and a memorandum and articles of association of a management company. The respondent also failed to reply to numerous letters from the Law Society. In making this latter finding, the Tribunal was cognisant of the fact that the respondent had misled the Law Society in a number of his written responses. The Tribunal made an order censuring the respondent, ordering him to pay a sum of €10,000 to the compensation fund, and ordering him to pay €10,000 as restitution to the complainants without prejudice to any legal right they may otherwise have, such sum to be paid within seven days of the making of the order. Costs were also awarded to the Law Society.

CHART 1: NUMBER OF NEW APPLICATIONS RECEIVED BY YEAR



In another case, a respondent delayed in the completion of stamping and registration of clients' deeds in a number of purchases and caused or allowed the dates on those deeds to be 'updated' to a date close to when the deeds were being submitted, with a consequent 'saving' of stamp duty, interest and penalty. He also, *inter alia*, caused or allowed some signatures on the 'updated' deeds to be forged by a person or persons in his office. The respondent was found guilty of professional misconduct in respect of the two aforementioned matters, in addition to six other matters, which were all admitted by the respondent. In relation to penalty, the Tribunal decided to refer the matter to the President of the High Court with a recommendation that the respondent should not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years standing, to be approved in advance by the Law Society, and that he pay a sum of €7,500 to the compensation fund. Costs were also awarded to the Law Society.

The usual hardy annual of failing to ensure that an accountant's report was furnished to the Law Society within the prescribed time arose in the year under review. As a result, fines ranging from €500 to €5,000 were imposed on respondents. The Tribunal would like to remind solicitors, especially those newly-qualified solicitors who are setting up in practice for the first time, of the importance of keeping properly written-up books of account and ensuring that the proper resources are in place to ensure compliance with all aspects of the accounts regulations.

As has been said so often in the past; every solicitor has a duty to reply promptly, fully and accurately to

correspondence and communications from the Law Society. However, it is evident from the findings of the Tribunal that some respondents find themselves unable to be open and frank in their responses and dealings with their clients and the Law Society, and indeed have shown a disregard for the Society's complaints process. Such behaviour is of serious concern to the Tribunal, because if regulation of the profession is to be effective, members of the public have to be confident that it works well and fairly.

The Tribunal is mindful of the many problems facing solicitors in the daily conduct of their practice. Nevertheless, it is a matter for solicitors to ensure that they have adequate resources to ensure they are fit to cope with the pressures and responsibilities to effectively maintain their practices. The Tribunal, in certain cases, have had to consider the ability of some solicitors to cope with the difficulties associated with private practice and, on occasions, have deemed it appropriate to recommend to the President of the High Court that the respondent concerned should not be permitted to practise as a sole practitioner or in partnership.

A number of cases involving alleged breaches of section 68 of the *Solicitors (Amendment) Act 1994* came on for hearing before the Tribunal during the period covered by this report. Allegations included breaching section 68(6) by failing to ensure that there was furnished to a client a bill of costs as prescribed by the provisions of the said section; agreeing or causing to be agreed the party-and-party costs of a client without the client's knowledge and authority; and causing or allowing to be caused the procurement of further monies as fees from a client, notwithstanding that the respondent was not entitled in the circumstances to procure such solicitor and client fees.

The Tribunal recognises that a solicitor is clearly entitled to be paid for the work that he has done and that he should draw a bill of costs for the totality of that work. Some of this work may be paid by the opposing party and is charged and paid for on what is known as a 'party-and-party' basis. Some of it may be properly paid by the client and this is charged and paid for on what is known as a 'solicitor/client' basis. However, if having presented a bill to the opposing party and that party wishes to seek a deduction, the solicitor may well have express or implied instructions to negotiate that bill, but if the solicitor does so, without recourse to the client, he cannot then seek to claim the difference between what he has charged the other party and what he ultimately recovers. This is because the costs to be recovered from the other party are the client's costs and will be used in discharge of the client's overall liability to the solicitor. In the circumstances, the client clearly has an interest in the outcome of any such negotiations and should be fully informed and consent to any decisions the solicitor may make on his behalf in this regard. If the solicitor is paid in full by the other party for the work he does, he is not entitled to charge an additional fee, which, in some cases, has been inappropriately termed a 'solicitor/client fee'. A solicitor has to be paid for what he has done, and if he recovers payment in full, he is not entitled to look to the client for some sort of bonus payment. Further, the fact that a client may well have paid the additional sum is not a bar to finding that it was improper or misconduct in circumstances where the client was misinformed about his entitlements.

Clients depend on solicitors to be truthful with them and to fully inform them in regard to their liability for fees. However, solicitors can only fully inform their clients if they themselves are familiar with the law in relation to the recoverability (or



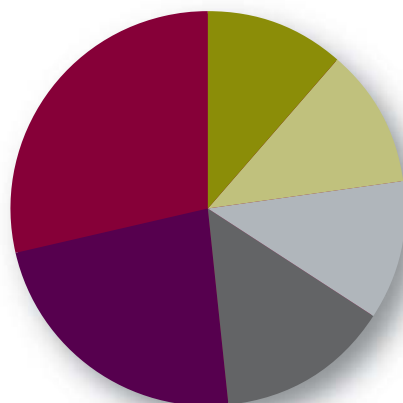
otherwise) of costs and expenses. Solicitors have an obligation to fully inform their clients if their firms are receiving fees from other parties. If those fees (if so recovered from another party) meet in full the costs that have been incurred, there is no basis for charging the client anything else. If the solicitor recovers his full costs from the opposing party, it is misconduct to suggest (wrongly) that there is a shortfall and seek to bill the clients.

In regard to two applications, in respect of the same respondent, relating, *inter alia*, to alleged breaches of section 68 of the *Solicitors (Amendment) Act 1994*, the Tribunal found the respondent guilty of professional misconduct in respect of causing or allowing to be caused the procurement of further monies as fees from his client, notwithstanding that he was not entitled in the circumstances to procure such solicitor and client fees, and charging

or causing to be charged a solicitor and client fee when there was no evidence of work done to justify such a fee. The Tribunal ordered, *inter alia*, that the respondent pay a sum of €7,000 to the compensation fund in respect of each finding.

Subject matter of complaints

Chart 2 shows a detailed analysis of the subject matter of complaints, where the Tribunal found that professional misconduct had taken place:



- 4 Administration of Estates
- 4 Civil Claims
- 4 Section 68
- 5 Law Society of Ireland
- 8 Solicitors Accounts Regulations
- 10 Conveyancing

Grounds on which professional misconduct was found

Administration of estates

- Causing a solicitor for the administrator to have to make an application to have a grant revoked;
- Failing to furnish the following documentation relating to the administration of the estate and requested by the Society:
 - i) Section 68 letter,
 - ii) Copy bill of costs,
 - iii) Copy statement of account,
 - iv) Copy receipt for payment of capital acquisitions tax for and on behalf of a client;
- Failing to account for interest on monies held by the respondent, which monies were due for payment to a client pursuant to

the provisions of statutory instrument no 372 of 2004 [*Solicitors Interest on Client Monies Regulation 2004*];

- Failing to deal with the administration of an estate in a timely manner;
- Failing to properly distribute to the beneficiaries an estate in a timely manner;
- Failing to respond to numerous letters from a solicitor acting for the person entitled to administer an estate;
- Ignoring multiple requests from a solicitor acting for the person entitled to administer an estate to submit the original grant of probate of the estate to the

Probate Office for cancellation;

- Through the respondent's conduct, causing delay and obstructing a solicitor in the administration of an estate;
- Through the respondent's obstructive conduct, preventing the complainant from having the capital acquisitions tax finalised in a timely manner.

Civil claims

- Delaying in progressing an action on behalf of a client;
- Delaying in progressing a personal injuries claim of a complainant;
- Delaying in forwarding a complainant's file to their new solicitors;

- Failing to furnish to a complainant's new solicitors information required by them to progress the complainant's case;
- Failing to reply to correspondence from the complainant's new solicitors;
- Failing to take steps to enter into settlement negotiations when invited to do so by letter from a solicitor for one of the defendants;
- Failing to enter into settlement negotiations despite repeated assurances given to the Law Society that the respondent would do so;
- Failing to inform solicitors for defendants until February 2004 that an offer made in October 2001 was not acceptable;
- Failing to pay a sum that was received by a respondent as a party-and-party cost representing fees due to the complainant in a timely manner or at all;
- Failing to pay over a settlement cheque to a complainant in a timely manner.

Communication with clients/colleagues

- Failing to correspond with a client, the complainant, in a timely manner or at all in relation to his cases;
- Failing to answer correspondence from the complainant;
- Failing to respond to 20 reminders sent by the complainant to the solicitor's firm.

Conveyancing

- Acting for a building company in relation to the sale of new houses, and in six cases also acting for the purchasers of the houses, in breach of the *Solicitors (Professional Practice Conduct and Discipline) Regulations of 1997* (SI no 85 of 1997);
- Failing to stamp a document on time or updating a document for the purposes of evading stamp duty;

- Causing or allowing the signature of a solicitor, on a particulars delivered form, to be forged, on the typewritten instructions of a person in the practice;
- Delaying in complying with an undertaking given to a building society in respect of a property by failing to complete and register the mortgage in favour of the building society in a timely manner;
- Failing to comply with an undertaking in relation to a property;
- Failing to discharge in a timely manner the Revenue penalty, notified by letter dated 10 June 2002, which arose because of the delay in presenting the deed for stamping;
- Failing to resubmit a deed for stamping in a timely manner;
- Failing to lodge a client's transfer in the Land Registry in a timely manner;
- Failing to comply with an undertaking to a bank to stamp and register the deed of charge and deed of transfer, and as soon as practicable to lodge the deeds together with the certificate of title with the bank in respect of a property on behalf of his client;
- Failing to lodge all appropriate documentation in the Land Registry in a timely manner, so that a dealing number could be obtained for a complainant;
- Failing to stamp and register a client's title, despite same having been purchased on 22 March 2000 and having been put in funds to stamp and register same in a timely manner or at all;
- Failing to hold purchase monies that were sent to the respondent in trust until all outstanding documentation was handed over to a complainant's solicitor;
- Misleading a client by stating in a letter that the respondent should have a folio and file plan showing the client registered as full owner within a matter of weeks, when in fact the respondent still held the

deed of transfer and had not relodged same for stamping and registration at that time;

- Releasing the proceeds of the sale of a property without obtaining the consent of the building society in advance;
- Giving unsatisfactory explanations to a bank as to the whereabouts of the proceeds of shares. This led to a bank terminating a client's development finance for a project, as the bank assumed that the respondent had given the client the proceeds in breach of the respondent's undertaking.

Regulatory body – Law Society of Ireland

- Failing to reply to correspondence from the Society;
- Failing to comply with a direction of the Complaints and Client Relations Committee;
- Failing to attend a meeting of the Compensation Fund Committee, now the Regulation of Practice Committee, when required to do so;
- Failing to attend at the Complaints and Client Relations Committee meeting, despite being requested to attend;
- Failing to comply with a notice pursuant to section 10 of the *Solicitors (Amendment) Act 1994*, causing the necessity for the Society to make an application to the High Court pursuant to section 11(3) of the *Solicitors (Amendment) Act 1994*;
- Failing to discharge a levy of €250 imposed at the Complaints and Client Relations Committee meeting;
- Failing to cooperate in the investigation of the complaint by the Society by persistently failing to deal with correspondence and failing to attend meetings and failing to provide any information;
- Misleading the Society in a letter that a completion of a registration of a client's title was being attended to when it was not;

- Misleading the Society in a letter by implying in the letter that a deed of transfer had been lodged in the Land Registry;
- Through the respondent's conduct, showing a disregard for the statutory obligation of the Society to investigate and resolve complaints;
- Through the respondent's conduct, obstructing the Society both in its investigation of the complaint and resolving the matter.

Section 68

- Breaching or causing to be breached section 68(1) of the *Solicitors (Amendment) Act 1994* by failing to provide or to ensure there was provided to a client the particulars in writing of charges, as provided for in the said section;
- Breaching or causing to be breached section 68(6) of the *Solicitors (Amendment) Act 1994* by failing to furnish or cause to be furnished to a client a bill of costs as prescribed by the provisions of the said section;
- Breaching section 68(8) when a client disputed the respondent solicitor's 'bill' by not taking all appropriate steps to resolve the matter by agreement with the client and informing the client in writing of:
 - i) The client's right to require the solicitor to submit the bill of costs or any part thereof to a taxing master of the High Court for taxation on a solicitor and own client basis, and
 - ii) The client's right to make a complaint to the Society, under section 9 of the act, that he had been issued with a bill of costs that he claimed to be excessive;
- Charging or causing to be charged a 'solicitor-and-client' fee when there was no evidence of work done to justify such a fee;
- Failing to issue a client with a section 68 letter.

Solicitors' Accounts Regulations

- Allowing a deficit in the client account, which deficit was causing debit balances in the clients' ledger;
- Allowing office ledger credit balances by failing to post invoices to the relevant office ledger accounts;
- Breaching regulation 11(1) of the *Solicitors' Accounts Regulations* (SI no 421 of 2001) in holding client moneys in respect of legal services that had been completed and where the respondent had failed to furnish to a client a bill of costs as provided for by the said regulation;
- Breaching regulation 21(1) of the *Solicitors' Accounts Regulations* (SI no 421 of 2001) in failing to ensure that there was furnished to the Society an accountant's report in a timely manner or at all;
- Failing to provide explanations to certain questions put to a respondent by an investigating accountant;
- Through the respondent's conduct, showing a disregard for statutory obligations to comply with the *Solicitors' Accounts Regulations* and showing disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

Other orders made by the Tribunal

The Tribunal made four orders removing the names of solicitors, at their own request, from the Roll of Solicitors.

Publication of orders of the Tribunal

Reports on the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society, as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*.

Conclusion

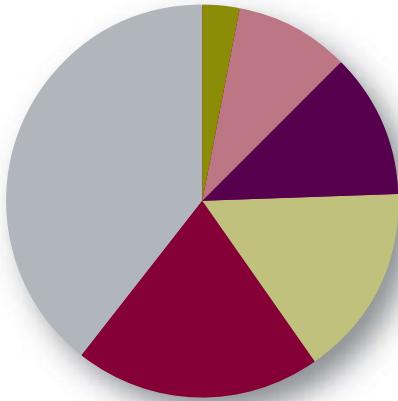
The concept of service, not just to the individual client but also to society, is inherent in the legal profession, and it is a concept that has influenced members of the profession over the decades. To maintain confidence in this concept, it is imperative to ensure that the highest possible standards are scrupulously enforced. In this regard, the Tribunal is conscious of its role under the *Solicitors Acts 1954 to 2002* and the Tribunal's rules and recognises the onerous responsibility it has to ensure that the interests of the public are safeguarded and that confidence is maintained in the disciplinary process and in the legal profession.

I want to thank in particular the lay members of the Tribunal. All solicitor members of the Tribunal appreciate the full participation in the Tribunal of our lay members. They have a vital and necessary role in the working of the Tribunal and their input into the Tribunal's decisions is greatly valued. I also want to thank my colleagues, the solicitor members, for their hard work and time commitment.

Finally I want to express my thanks and appreciation to the Tribunal registrar, Mary Lynch, the secretary to the registrar, Monica Murray, and Barry Lennon, administrator, for all their good work, patience and good humour. The work of the Tribunal can be at times distressing and difficult and, without such a great team, the Tribunal would not operate efficiently or effectively.

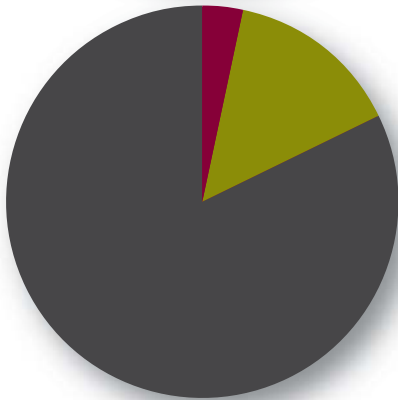
Francis D. Daly
Chairman

Status of applications as at 31 December 2007



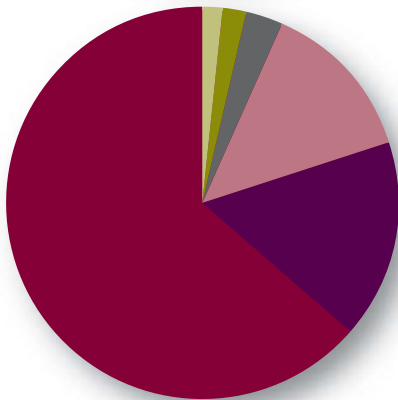
STATUS OF ALL APPLICATIONS RECEIVED IN 2007: PRIOR TO INQUIRY

- 0 Prima Facie adjourned
- 3 Withdrawn prior to Prima Facie
- 9 Prima Facie found/not found
- 11 Prima Facie not found
- 15 Awaiting Prima Facie
- 19 Prima Facie found
- 37 Exchange of Affidavits



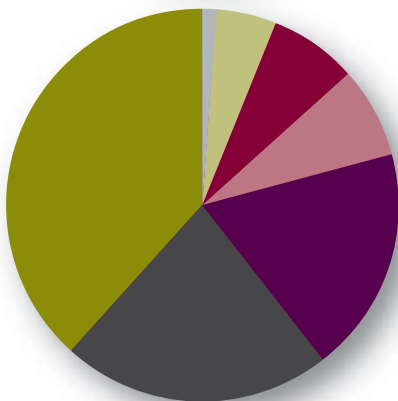
STATUS OF ALL APPLICATIONS RECEIVED IN 2007: INQUIRY STAGE

- 0 Withdrawn after inquiry directed
- 0 No misconduct
- 0 Inquiry on-going
- 0 Inquiry adjourned
- 1 Misconduct yes/no
- 4 Misconduct
- 23 Awaiting inquiry



STATUS OF ALL APPLICATIONS RECEIVED IN 2006: PRIOR TO INQUIRY

- 0 Exchange of Affidavits
- 2 Awaiting Prima Facie
- 2 Withdrawn prior to Prima Facie
- 3 Prima Facie adjourned
- 14 Prima Facie found/not found
- 17 Prima Facie not found
- 66 Prima Facie found



STATUS OF ALL APPLICATIONS RECEIVED IN 2006: INQUIRY STAGE

- 1 Withdrawn after inquiry directed
- 4 No misconduct
- 6 Misconduct yes/no
- 6 Inquiry on-going
- 15 Inquiry adjourned
- 18 Awaiting inquiry
- 31 Misconduct

Appendix 1

ANALYSIS OF APPLICATIONS AND DECISIONS

OUTCOME OF APPLICATIONS OUTSTANDING FROM PREVIOUS YEARS DEALT WITH DURING 2007		NEW APPLICATIONS YEAR ENDING 31 DECEMBER 2007	
	116		94
LAW SOCIETY	73	LAW SOCIETY	53
OTHERS	43	OTHERS	41
	<u>116</u>		<u>94</u>
Exchanging affidavits	00	Exchanging affidavits	37
<i>Prima facie</i> case rejected	12	<i>Prima facie</i> cases rejected	11
Awaiting <i>prima facie</i> decision	03	Awaiting <i>prima facie</i> decision	15
<i>Prima facie</i> application withdrawn	01	<i>Prima facie</i> application withdrawn	03
<i>Prima facie</i> decision adjourned	07	<i>Prima facie</i> decision adjourned	00
<i>Prima facie</i> cases found	27	<i>Prima facie</i> cases found	19
<i>Prima facie</i> cases found/rejected	09 ⁺	<i>Prima facie</i> cases found/rejected	09 ⁺
HEARINGS		HEARINGS	
Misconduct found	24	Misconduct found	03
Misconduct not found	04	Misconduct not found	00
Misconduct found/rejected	07 [*]	Misconduct found/rejected	01 [*]
Part heard	23	Part heard	01
Withdrawn	04	Withdrawn	00
Awaiting inquiry	32	Awaiting inquiry	23

* In these cases, the Tribunal found both misconduct and no misconduct in respect of multiple allegations

+ In these cases, the Tribunal found that there was a *prima facie* case for inquiry and that there was no *prima facie* case for inquiry disclosed in respect of multiple allegations.



Appendix 2

ORDERS MADE BY THE TRIBUNAL PURSUANT TO SECTION 7(9) OF THE SOLICITORS AMENDMENT ACT 1960 AS SUBSTITUTED BY SECTION 17 OF THE *SOLICITORS (AMENDMENT) ACT 1994* AND AMENDED BY SECTION 9 OF THE *SOLICITORS (AMENDMENT) ACT 2002*

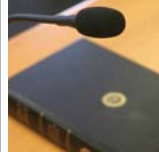
ORDERS OF THE TRIBUNAL IN RESPECT OF THE APPLICATIONS SET OUT IN THE ABOVE TABLE	NUMBER OF ORDERS
Censure, fine, restitution and costs	2
Censure, fine and costs	14
Admonish and advise and costs	4
Admonish and advise and fine	1
Admonish and advise, fine and costs	1
Admonish and advise and costs	1
Referrals to the President of the High Court	12

Appendix 3

REPORTS OF THE DISCIPLINARY TRIBUNAL UNDER SECTION 7(3)(B)(II) OF THE SOLICITORS (AMENDMENT) ACT 1960 (AS SUBSTITUTED BY SECTION 17 OF THE SOLICITORS (AMENDMENT) ACT 1994 AND AS AMENDED BY SECTION 9 OF THE SOLICITORS (AMENDMENT) ACT 2002).

Referrals by the Tribunal to the President of the High Court in respect of the applications set out in Appendix 2.

RECOMMENDATIONS OF THE TRIBUNAL	
<ul style="list-style-type: none"> The respondent solicitor is not a fit person to be a member of the solicitors' profession and that his name be struck off the Roll of Solicitors. The respondent solicitor pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court, in default of agreement. 	1
<ul style="list-style-type: none"> The respondent solicitor is not a fit person to practise as a solicitor and that he be suspended from practise for such period and on such terms as the court thinks fit. The respondent solicitor pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court, in default of agreement. 	1
<ul style="list-style-type: none"> The respondent solicitor not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years standing, to be approved in advance by the Law Society of Ireland. The respondent solicitor pay a sum of €666.81 in total as restitution to the complainant in respect of fees paid to the respondent solicitor for medical reports by the complainant. The respondent solicitor pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court, in default of agreement. 	1
<ul style="list-style-type: none"> The respondent solicitor not be permitted to practise as a sole practitioner, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years standing, to be approved in advance by the Law Society of Ireland. The respondent solicitor pay a sum of €7,500 to the compensation fund. The respondent solicitor pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court, in default of agreement. 	1
<ul style="list-style-type: none"> The respondent solicitor not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years standing, to be approved in advance by the Law Society of Ireland. The respondent solicitor pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court, in default of agreement. 	3 +



<ul style="list-style-type: none">• The respondent solicitor not be permitted to practise as a sole practitioner, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years standing, to be approved in advance by the Law Society of Ireland.• The respondent solicitor pay a sum of €500 to the compensation fund.• The respondent solicitor pay the whole of the costs of the Law Society of Ireland, to be taxed in default of agreement.	3 *
<ul style="list-style-type: none">• The respondent solicitor not be permitted to practise as a sole practitioner, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years standing, to be approved in advance by the Law Society of Ireland.• The respondent solicitor pay the whole of the costs of the Law Society of Ireland, to be taxed in default of agreement.	2

* Three cases relate to one respondent
+ Two cases relate to one respondent

Appendix 4

ORDERS OF THE HIGH COURT MADE PURSUANT TO SECTION 8 OF THE SOLICITORS (AMENDMENT) ACT 1960 AS SUBSTITUTED BY SECTION 18 OF THE SOLICITORS (AMENDMENT) ACT 1994 AND AS AMENDED BY SECTION 10 OF THE SOLICITORS (AMENDMENT) ACT 2002.

RECOMMENDATIONS OF THE TRIBUNAL	
<ul style="list-style-type: none"> The respondent solicitor not be permitted to practise as a sole practitioner and that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years standing, to be approved in advance by the Law Society of Ireland. The respondent solicitor pay a sum of €500 in respect of each of the three complaints, totalling €1,500 fines to be paid to the compensation fund. The respondent solicitor pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court, in default of agreement. 	1
<ul style="list-style-type: none"> The respondent solicitor not be permitted to practise as a sole practitioner and that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years standing, to be approved in advance by the Law Society of Ireland. 	1
<ul style="list-style-type: none"> Cases adjourned. 	2
<ul style="list-style-type: none"> Cases awaiting presentation by the Law Society to the President of the High Court. 	12

On appeal by an applicant/appellant, the High Court affirmed the decision of the Tribunal in one case where it had found that the respondent was not guilty of professional misconduct.

Solicitors Disciplinary Tribunal
The Friary, Bow Street, Smithfield, Dublin 7, Ireland

Tel: 01 869 0766 Fax: 01 869 0767
Email: general@ddistrib.ie

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