

SOLICITORS DISCIPLINARY TRIBUNAL

Chairperson's Report

Year ending 21 May 2003

Solicitor Members

*Thomas D. Shaw Chairperson
Ernest Cantillon
Michael Carrigan
Niall Casey
Clare Connellan
Jean Cullen
Frank Daly
Joe Deane
Paula Duffy
Carol Fawsitt
Isabel Foley
Berchmans Gannon
Maeve Hayes
Michael Hogan
Donal Kelliher
Brian McMahon
Caroline O'Connor
Geraine O'Loughlin
Michael O'Mahony
Ian Scott*

Lay Members

*Mary Conlon
Ted Conlon
Denis Murphy
Pauline Kingston
Kristin Quinn*

Tribunal Registrar:

Mary Lynch BSc (Mgt) , Dip Leg Stds, Dip Mgt Law

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1 Introduction

- 1.1.** The last year has seen the Tribunal engage in a major move from its administrative offices in Manor Street to The Friary, Bow Street, Smithfield, Dublin. Our new premises allow the Tribunal to hold its inquiries in comfortable and well appointed accommodation. They are also centrally located and reflect the standing and independent nature of the Solicitors Disciplinary Tribunal, whose members are appointed by the President of the High Court. Notwithstanding the move the Tribunal continued to conduct its business despite the inevitable frustrations and pressures of changing premises.
- 1.2** The Tribunal also engaged in a comprehensive review of its Rules to ensure compliance with the new Solicitors (Amendment) Act 2002, which came into operation on the 1 January 2003. On behalf of the Tribunal I would like to thank Michael O'Mahony, for the many hours he worked on this project.
- 1.3** The inclusion of the regulatory function of the Tribunal in the Law School's module "Professional Practice Conduct and Management in the Professional Practice Course for trainee solicitors is welcomed by the Tribunal. The Tribunal recognises that not all solicitors are aware of its existence or its work and hopefully the contribution of the Tribunal Registrar to the module will help to improve this situation.
- 1.4** It will be observed from the table below that in 2002 there was an increase in the number of sittings days of the Tribunal and new applications compared with 2001. As a consequence the workload of the fifteen members of the Tribunal also expanded. Thankfully 10 new solicitors members were appointed in December 2002 and this has lightened the burden on their colleagues who have generously given of their time without any recompense. It is anticipated that a further 5 lay members will be appointed in the near future and this should improve the position for our present lay members. I would like to take this opportunity to acknowledge the dedication, and hard work of all members who willingly give their services to the Tribunal.

Year ending 21 May	No. of new applications	No of sitting days
2001	48	27
2002	67	34
2003	63	32

- 1.5.** The function of the Tribunal is best described as quasi-judicial. Its authority is derived from the Solicitors Acts 1954 to 2002 and the Solicitors Disciplinary Tribunal Rules 2003. Any inquiry undertaken by the Tribunal must comply with the requirements of natural and constitutional justice. Procedural safeguards in place include giving a respondent solicitor sufficient notice and details of the application and the opportunity to respond. Because the consequences of disciplinary proceedings can have such a detrimental effect on the livelihood of a solicitor the Tribunal endeavours to ensure that the conduct of proceedings is scrupulously fair.

- 1.6** Apart from its jurisdiction in relation to misconduct the Tribunal may also make an Order for the removal of a solicitor's name from the Roll of Solicitor, at his/her own request, where for example a solicitor is applying to become a member of the Bar.

2 Constitution

- 2.1** The Solicitors Disciplinary Tribunal is an independent statutory tribunal appointed by the President of the High Court to consider allegations of misconduct against solicitors.
- 2.2** The Tribunal consists of 20 solicitor members and five lay members. These latter members are nominated by the Minister for Justice Equality and Law Reform to represent the interests of the general public, while solicitors members are appointed by the President of the High Court after consultation with the Law Society of Ireland.
- 2.3** Members are appointed for a period not exceeding five years as the President of the High Court may determine and may be re-appointed for one further period. Further at least 40% of the solicitor members and of the lay members of the Tribunal shall be men and at least 40% shall be women.

3 Applications

- 3.1** The number of applications coming before the Tribunal for the year ending 21 May 2002 increased by approximately 42% and fell by 7% the following year.
- 3.2** While the majority of applications to the Tribunal emanate from the Law Society of Ireland, members of the public may also make a direct application to the Tribunal. The Tribunal recognises that lay applicants, where an inquiry has been directed, may have a difficulty for one reason or another instructing a solicitor to represent them. Consequently the Tribunal allows lay applicants to be accompanied by a "McKenzie Friend", who may assist them, but not take an active part in the proceedings.
- 3.3.** The Rules of the Tribunal provide for certain time limits; for example a respondent solicitor has 28 days (excluding Saturdays and Sundays) to forward to the Tribunal an affidavit in response to the complaints made. The Tribunal subsequently sends a copy of the respondent solicitor's response (if any) to the applicant, who may in turn file a further (second) affidavit responding to the matters raised by the respondent solicitor within 28 days (excluding Saturdays and Sunday). If appropriate the Tribunal may extend the time limit to allow either party to respond to the affidavit of the other party by a further 21 days (excluding Saturdays and Sundays). Further in exceptional cases the Tribunal may permit a further exchange of affidavits between the parties and will fix the time allowed for this exchange. As a consequence of these time limits a number of months may elapse from the lodgement of an application and the date the Tribunal makes a decision in relation to whether or not there is a prima facie case for inquiry.

3.4. Analysis of applications and decisions

New applications year ending 21 May 2002 68		New applications year ending 21 May 2003 63		Applications carried forward from previous years (including y/e 21/5/2002 104	
Law Society applications	57		43		76
<i>Prima facie case found</i>	35	<i>Prima facie cases found</i>	30	<i>No prima facie case</i>	6
<i>No prima facie case found</i>	2	<i>Awaiting prima facie decision</i>	10	<i>Awaiting prima facie decision</i>	1
<i>Awaiting prima facie decision</i>	20	<i>Prima facie decision deferred</i>	3		
At hearing		At hearing		At hearing	
<i>Misconduct</i>	2	<i>Misconduct</i>	5	<i>Misconduct</i>	47
<i>No misconduct</i>	27	<i>No Misconduct</i>	1	<i>No Misconduct</i>	7
<i>Adjourned</i>	1	<i>Adjourned</i>	10	<i>Leave granted to withdraw application</i>	3
<i>Awaiting inquiry</i>	5	<i>Awaiting Inquiry</i>	14	<i>Adjourned</i>	10
				<i>Awaiting inquiry</i>	2
Lay applications	11		18		28
<i>Prima facie case found</i>	3	<i>Prima facie case found</i>	3	<i>No prima facie case</i>	13
<i>No prima facie cases found</i>	4	<i>No prima facie cases found</i>	8	<i>Withdrawn</i>	1
<i>Awaiting prima facie decision</i>	4	<i>Awaiting prima facie case decision</i>	6	<i>Awaiting prima facie decision</i>	2
		<i>Prima facie decision deferred</i>	1		
At hearing		At hearing		At hearing	
<i>Misconduct</i>	1	<i>No Misconduct</i>	1	<i>Misconduct</i>	2
<i>Adjourned</i>	1	<i>Awaiting Inquiry</i>	2	<i>No Misconduct</i>	5
<i>Awaiting inquiry</i>	1			<i>Leave granted to withdraw application</i>	1
				<i>Struck out</i>	1
				<i>Adjourned</i>	3

4 Orders made by the Disciplinary 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 made by the Tribunal in respect of the applications set out at table	Number of orders
Censure fine and costs	38
Censure Restitution and costs	3
Fined and costs	2
Censure and costs	2
Advised admonished fined and costs	2
Advised admonished and costs	1
Censure	1
Reprimanded	1

Fines ranged from €500 to €6,340

5 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 amended by section 9 of the Solicitors (Amendment) Act 2002

Recommendations:

The respondent solicitor not be permitted to practise as a sole practitioner, that the respondent solicitor be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least 10 years standing to be approved in advance by the Law Society of Ireland	4*
The name of the respondent solicitor be struck off the Roll of Solicitors and that the respondent solicitor make recompense, if possible, to the Compensation Fund of the Law Society.	2
The respondent solicitor be allowed continue to practise as an assistant solicitor under the supervision of a solicitor of at least ten years standing to be approved of by the Law Society of Ireland. The respondent solicitor is not to be allowed to handle clients' funds and will have no cheque signing authority. The respondent solicitor be censured and pay the whole of the costs of the Law Society to be taxed in default of agreement	1
The name of the respondent solicitor be struck off the Roll of Solicitors and pay the whole of the costs of the Law Society to be taxed in default of agreement	2
The respondent solicitor be suspended from practice	1

**These relate to the same solicitor*

6 Observations on complaints before the Tribunal

- 6.1** The Tribunal has considered a variety of complaints against solicitors. The most frequent grounds of complaint continue to be under the headings of delay and lack of information. This is of concern to the Tribunal as there are a considerable number of occasions where solicitors accepted instructions to attend to certain matters and subsequently failed to bring the particular business to a conclusion.
- 6.2** A number of complaints in relation to conveyancing matters reflect considerable slackness in attending to established conveyancing procedures and in certain cases these failures have had very serious consequences
- 6.3** To be in breach of the Solicitors Accounts Regulations is a disciplinary matter. Every practising solicitor has a duty to file with the Law Society of Ireland an accountant's certificate for the end of his/her financial year. The absence of book-keepers or a proper system of book-keeping in solicitors' offices has resulted in a number of solicitors appearing before the Tribunal and having serious fines, in addition to costs, being imposed on them. The importance of keeping up to date books cannot be over emphasised for not only do they enable a solicitor's own accountant and the Law Society's investigating accountant to verify the position, but they also enable a solicitor to establish compliance with the Regulations.
- 6.5** During the period under review the Tribunal has taken a very strong stance in regard to the failure of solicitors to adhere to the provisions of section 68 of the Solicitors (Amendment) Act 1994. In one such case the Tribunal found a solicitor guilty of misconduct in regard to a failure to comply with the statutory obligation to furnish a bill in the format prescribed by section 68 (6) of the Solicitors (Amendment) Act 1994 and imposed a fine of €2,000 in regard thereto. The Tribunal also ordered the respondent solicitor to pay a sum of €5,078.95 as restitution to the client. By way of highlighting its attitude in regard to breaches of section 68 the Tribunal asked the Law Society to publish the following notice in its Gazette

“The Tribunal is concerned that it should go out from here that if there is any practice in relation to settlements in road traffic accidents as between solicitors and their clients relating to fees, in so far as the Tribunal is concerned they wish it to be stated very clearly that the provisions of section 68 of the Solicitors (Amendment) Act, 1994 is the law which is applicable to this area of practice. As far as the Tribunal is concerned that is the law that will be applied and no other practice will in any sense be deemed to take over that law.

The Tribunal wishes it to be known that a solicitor who has been paid in full by the insurance company for the work done is not entitled to any extra fee from his client for that same work.

We feel that it is very important for the future of the profession and the future of the clients of the profession that everybody knows what the law is and the fullest possible promulgation of the terms of section 68 should be made available to the profession, as has happened, but also to the general public.”

- 6.6** Another frequent cause of complaint is simply the solicitor’s failure to reply to the correspondence of clients and the Law Society. Failure to keep clients adequately informed of the progress of their business means that clients naturally assume that nothing is happening and consequently blame their solicitors. Ideally complaints of this nature should never reach the Tribunal, but nevertheless such a failure may instigate a complaint to the Law Society and ultimately end with a referral to the Tribunal.
- 6.7** The privacy of family laws proceedings is protected by legislation which places an embargo on the production to any third party of information which derives from family law proceedings. In the decision of Murphy J in RM –v- DM. the primacy of the *in camera* rule was endorsed. It was also emphasised that the disclosure of any such material or information to a third party, (and this would include the Solicitors Disciplinary Tribunal) even with the consent of the parties to the proceedings, could amount to contempt of court. In the circumstances the Tribunal, at the present time, is unable to prosecute applications alleging misconduct against solicitor arising out of family law matters. I understand the Law Society of Ireland and the Independent Adjudicator of the Law Society, Mr. Eamonn Condon, have made submissions to the Minister for Justice, Equality & Law Reform seeking amendments to the *in camera* legislation which would allow consideration of complaints relating to family law matters.

7 Subject matter of complaints

Conveyancing
Civil Actions
Administration of Estates

8 Principal grounds on which professional misconduct was found

8.1 Administration of Estates

- delaying in extracting a Grant of Administration to the estate
- failing to apply for a grant of probate in a timely manner or at all and failing to account to the estate for assets and interest thereon and allowing a deficit in the estate,
- untruthfully stating in a letter to beneficiaries that the solicitor was awaiting a certified copy of the Inland Revenue Affidavit from the Revenue Commissioners when the same had not been sworn or lodged with the Revenue Commissioners;
- untruthfully stating in four letters to beneficiaries that the administration was nearing completion when in fact the Inland Revenue Affidavit was not sworn and the solicitor had not applied for the necessary administration bond and did not subsequently send papers for lodgement in the Probate Office.

8.2 *Civil Actions*

- delaying in prosecuting the personal injuries action of a client over a period of some 18 years;
- seriously prejudicing a client through gross neglect of their case;
- lying to a client about the progress of a non-existent “appeal”;
- misleading clients in relation to the progress of their case and failing to tell them that any remedy in their favour could be statute barred;
- putting a client in a very difficult situation with a financial institution by misleading the client.
- deducting fees from a settlement without a client’s knowledge or consent.
- failing to advise a client of the correct amount of a settlement;
- failing to take the necessary steps to protect a clients’ interests;
- failing in duty of disclosure to a client in concealing from and/or a colleague that the claim had been allowed to become statute barred;

8.3 *Communication with clients/colleagues*

- failing to comply with a client’s instructions to hand over a file to a new firm of solicitors despite the fact that the solicitor had effectively stopped doing any further work to progress the case on behalf of the client;
- failing to respond to correspondence and telephone calls of enquiry from a client about the client’s case,
- failing to comply with a commitment to a colleague to furnish title documents in a timely manner or at all;
- failing to reply to his colleagues correspondence;

8.4 *Conveyancing*

- failing to conclude a conveyancing transaction on behalf of a client thereby severely prejudicing the client in that a judgement was obtained against the client as a result;
- misleading clients by informing them that a sale had closed and by paying out monies on foot of this purported closing when this was not the true position;
- failing to discharge a mortgage and failing to account to a client for the monies concerned necessitating a payment out of the Society’s Compensation Fund.;
- allowing a conflict of interest insofar as the solicitor never disclosed that his partner was purchasing the property;
- allowing a conflict of interest insofar as the solicitor never advised the clients to obtain separate legal advice;

8.5 *Professional Indemnity Insurance*

- failing to hold professional indemnity insurance cover in breach of the Professional Indemnity Insurance Regulations (SI No 312 of 1995 as amended).

8.6 *Solicitors Accounts Regulations*

- causing or allowing clients’ monies to be misappropriated and misapplied for personal and office purposes;

- causing a deficit to be concealed from both solicitor's reporting accountant and the Law Society's investigating accountant by falsifying books of account over a number of years;
- lodging clients' monies into an account held at a building Society in the name of a secretary, in breach of Regulation 3 of the Solicitor's Accounts Regulations;
- lodging a portion of the proceeds of an estate to the solicitor's personal account thereby being in breach of Regulation 3 of the Solicitors Accounts Regulations;
- breaching Regulation 7(a) (iv) of the Solicitors' Accounts Regulations No. 2 of 1984 in retaining monies in respect of fees and outlay from monies held on behalf of a client without furnishing the client with a bill of costs or other written intimation of the amount of the costs;
- breaching Regulation 8 (1) and (2) of the Solicitors Accounts Regulations No 2 of 1984 by drawing monies from the client account in the form of cheques payable to clients but negotiated by the solicitors for their own benefit and further without the authorisation by the Council of the Society prescribed by Regulation 8 (2);
- breaching Regulation 9 (1) of the Solicitors Accounts Regulations in failing to keep a record of lodgements received in connection with the solicitor's practice. Further minimum books of account were not maintained in connection with a building society account;
- failing to keep proper books of account to show dealings with clients money by withdrawing from the client account all funds held on behalf of a client by way of a cheque made payable to cash thereby concealing that a solicitor/client fee had been charge and therefore breaching Regulation 10(1) of the Solicitors Accounts Regulations;
- breaching Regulation 21 (1) of the Solicitors Accounts Regulation No 2 of 1984 in failing to deliver to the Law Society an Accountant's Reports;
- failing to reimburse clients the monies they advanced as a contribution to professional fees and costs incurred on doctors, engineers, actuaries and other witnesses notwithstanding that their costs were subsequently received by the solicitor by way of party/party costs and solicitor/client fees;
- allowing or causing the books of account to be falsified by means of systematic teeming and lading where funds which were received subsequently from other clients were placed to the credit of the client whose remittance was originally misappropriated to conceal the deficit arising on the client account.

8.7 Section 68

- failing to comply with section 68 (1) of the Solicitors (Amendment) Act 1994;
- deducting or appropriating monies in respect of their charges from the monies payable to clients arising out of contentious business carried out on behalf of the clients in breach of section 68 (3) (4) and (5) of the Solicitors (Amendment) Act, 1994;
- failing to furnish clients with bills of costs in breach of section 68 (6) of the Solicitors (Amendment) Act, 1994.

8.8 *Supervision*

- failing to exercise any or adequate supervision over non-qualified employees in the office;
- was aware that a law clerk/bookkeeper signed the solicitor's name on cheques and failing to instruct him to desist
- failing to exercise any or adequate supervision over an unqualified employee who represented a client in the prosecution of a case in the respondent solicitor's office.

8.9 *Undertakings*

- breaching a solicitor's undertaking with a bank to discharge a sum of money to the bank on completion of a conveyancing transaction.
- failing to comply with an undertaking given to a client to deal with all Land Registry queries in connection with the registration of title

8.10 *Regulatory Body – Law Society of Ireland*

- lying to the Registrar of Solicitors when the respondent solicitor stated regarding a delay in filing an accountant's report that the balances had been checked "and everything was in order" whereas there was a deficit in client account.
- failing to respond to the Society's correspondence in a timely manner or at all.
- failing to comply with undertakings given to the Registrar's Committee
- failing to comply in a timely manner with the directions of the Registrar's/Compensation Fund Committees
- misleading the Registrar's Committee and Compensation Fund Committees.
- failing to comply with a notice pursuant to section 10 of the Solicitors (Amendment) Act, 1994 requiring the delivery to the Society of the Complainant's file and papers to investigate the complaint of the complainant;

9 **Cases presented to the High Court**

Struck off the Roll of Solicitors	2
Practising Certificate be limited to the effect that the solicitor is limited to practice as an assistant to a solicitor of not less than ten years standing	2*
Adjourned	4
Awaiting presentation to the High Court	2*

***4 referrals to the High Court in respect of the same solicitor**

10 Other orders made by the Tribunal

For the period ending the 21 May 2003, the Tribunal made seven orders removing the names of the solicitors, at their own request, from the Roll of Solicitors. This was an increase on the previous period when four such orders were made.

11 Conclusion

The last year has seen the expansion and enhancement of the Tribunal's jurisdiction and powers under the Solicitors (Amendment) Act 2002. As previously indicated, sometime during the coming months five additional lay numbers are due to be appointed. This will obviously place an extra burden on the staff and resources of the Tribunal. The Tribunal however is committed to ensuring that whatever staff and/or resources are required will be forthcoming to ensure that the Tribunal is enabled to carry out its function and to maintain its independence.

Thomas D. Shaw
Chairperson

